A TREATISE

ON THE

LAWS GOVERNING

THE

Exclusion and Expulsion of Aliens

IN THE

UNITED STATES

BY

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WASHINGTON, D. C.
JOHN BYRNE & CO.
1912

TO
MY FATHER

PREFACE

The purpose of this book is to present the general result of the decisions of the Federal Courts which have been rendered in cases involving the right of foreigners to enter or remain in the United States under the provisions of the statutes passed dealing with their exclusion and expulsion from this country during the past thirty years. The author has attempted to show that, in the United States, the right of foreigners to enter or remain cannot be adequately considered as a purely administrative question, or one the solution of which lies in the application of the accepted precepts of international law governing the subject; that the acts of Congress the purpose of which was to regulate the admission and residence of aliens in the United States, together with the judicial decisions by which they have been enforced, form a distinct and important branch of our municipal law. That this is so appears not only from the abundant list of cases adjudicated since the early days of Congressional legislation on immigration, but from a casual glance at the decisions which are being handed down to-day in the Circuit and District Courts.

Although the work is primarily designed for the use of those engaged in practice before the courts, or in Departmental practice, whether at ports of entry or before the Bureau of Immigration at Washington, it is thought that it may contain matter of value to those whose office demands from time to time the consideration of questions concerning the exclusion and expulsion of aliens from the broad standpoint of the law of nations.

The compilation of foreign laws contained in the appendix was to a large extent made simple by the assistance provided by M. Martini's excellent work, L'Expulsion des Etrangers, in which many of these laws, particularly those

of the European countries, were carefully compiled, and appear here translated from the French.

For the presence in the appendix of the laws or summaries of laws, consisting mainly of those of Great Britain and her Colonies, the author acknowledges his grateful indebtedness to Mr. Daniel J. Keefe, Commissioner General of Immigration, the officers of his Law Division, and particularly to Mr. W. W. Husband, formerly with the Immigration Commission, and now Chief of the Contract Labor Division of the Department of Commerce and Labor. And it is with a sense of deep gratitude that he acknowledges the encouragement and painstaking assistance of Mr. A. Warner Parker, law officer of the Bureau of Immigration, during the greater period of the preparation of this work, to whose suggestions, criticisms, and careful revision of many portions thereof whatever merit it may be found to contain will be in large part due.

WASHINGTON, *Sept. 12, 1912.*

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The Exclusion and Expulsion of Aliens in the United States

CHAPTER I.

POWER AND METHODS OF EXCLUSION AND EXPULSION.

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I. General Right of Governments to Exclude or Expel.

It is a generally accepted principle of international law that any state, being an independent member of the family of nations, may, in the exercise of its inherent powers of sovereignty, prohibit the entrance of foreigners into its territory, or prescribe the conditions under which they shall be allowed to enter, and that this may be done either with regard to foreigners as a whole, or only as to certain classes of aliens. Since under international law no foreigner can claim, as of right, to enter the jurisdiction of a sovereign state other than his own, it necessarily follows that the right to exclude all foreigners is recognized under the law of nations. At the same time it is obvious that under conditions as they exist to-day, no civilized nation would enter upon the indiscriminate exercise of either the right of exclusion or expulsion.

"For a state to exclude all foreigners," says Mr. Hall,[1] "would be to withdraw from the brotherhood of civilized peoples; to exclude any without reasonable or at least plausible cause, is regarded as so vexatious and oppressive that a government is thought to have the right of interfering in favor of its subjects in cases where sufficient cause does not, in its judgment, exist."

But the fact that the exercise of the right to exclude by one nation may appear unwarranted from the standpoint of the state whose citizens have been subjected to such treatment, and may, with the full sanction of international law lead to diplomatic intervention, reprisals, or even war, is no argument against the existence of the general right to do so. The Supreme Court of the United States has held that jurisdiction over its own territory to the extent of enabling it to exclude or expel aliens therefrom is the right of every independent nation, and constitutes a part of its independence; that if it could not exercise this power it would be to that extent subject to the control of another

[1]International Law, 4th Ed., p. 223.

nation; that to preserve its independence and to provide security against foreign aggression and encroachment is the highest duty of a state, and to attain these ends all other considerations are to be subordinated, irrespective of whether or not aggression or encroachment are the result of national acts on the part of unfriendly states, or arise merely from the influx of undesirable aliens into the country.[2] In other words, inasmuch as the right of self-preservation exists unlimited and unabridged in every independent state, the right to take any steps which, in the opinion of the state itself, are necessary to guarantee its absolute protection, must be equally unlimited; and the state itself must, perforce, be the only judge as to the existence of the contingency on which its action is based, the nature of the action to be taken, and the persons or classes of persons who shall be subjected to its effects. That the absolute right to exclude or expel in the public interest of the state exists in every independent nation is admitted on all hands by publicists and recognized authorities on international law.[3]

"It is at all events certain," says Pradier-Fodéré,[4] "that the power which every state has to expel strangers from its territory is one of the complementary elements of the protection to society which is the end and purpose of the right to inflict punishment. This power to compel a stranger to leave the country by causing him, if need be, to be conducted to the frontier, is the immediate result

[2]Chae Chan Ping v. United States, 130 U. S. 531, 32 Law Ed. 1068; Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[3]1 Vattel Law of Nations, chap. 19, par. 230, 231; 2 Ortolan, Diplomatie de la Mer (4th Ed.), chap. 14, p. 297; 1 Phillimore, International Law (3d Ed.), chap 10, par. 220; Bar, International Law (Gillespie's Ed., 1883, 708, Note 711; Fiore, Nouv. dr. int. publ. (2d Ed.) (Antoine's translation into the French), t. 1, n. 699, t. 3, n. 1297, p. 93; Calvo, Le dr. int. (5th Ed.) (French), Vol. 2, par. 700; Bonfils, Manuel du Droit Int. Pub., par. 442; Darut, De l'Expulsion des Etrangers: Aix, 1902; Moore Int. Law Dig., Vol. IV, par. 550, p. 68; Martini, l'Expulsion des Etrangers, p. 14.

[4]Vol. III, Traite de Droit International Public, par. 1857.

of sovereignty. It is vain to deny the existence of this right by alleging that human liberty is the most sacred of all natural rights, and that its complete development is not limited by the boundaries of the country of which one is a citizen; that it is contrary to the principles of law and to the true interests of the people to abridge complete freedom in the maintenance of permanent relations between the nationals of the various states; that expulsion is a penalty, and that an individual who has not been found guilty cannot be punished; that the state which believes that it has cause to complain of a stranger's acts will deal more equitably in bringing him before a judicial tribunal in order to determine whether he is innocent or guilty. This argument may always be successfully met by showing that the right of dwelling unrestricted in any place may be subjected to limitations in the general interest of the political community, as may all rights; and that, with regard to persons who fall short of living up to those obligations which arise from the enjoyment by them of the hospitality of the particular nation and turn out to be objects of anxiety or permanent sources of danger or scandal to the state which receives them, there is no obligation on the part of the state to exercise generosity up to the point of imposing upon its authorities the obligation of keeping them under surveillance for the purpose of thwarting their criminal machinations....."

The exercise of the right of expulsion is generally discussed by the European authorities in connection with the performance of some act or acts on the part of the alien constituting in itself an immediate cause or justification for the measure adopted.[5] But since the mere presence

[5] *Acts of an anarchistic or socialistic tendency.* Expulsion of Prince Kropotkin, Switzerland, 1881. *Condonation of assassination.* Expulsion of Laurent Tilhade, Belgium, 1901. *Organization of labor unions,* case of Ben Tillet, Belgium, 1896. *Espionage,* Hoffman case, Switzerland, 1893; Richthofen case, Switzerland, 1902. *Intrigues against the State,* The Spanish Ambassador, Great Britain, 1584; the French Minister, Great Britain, 1654; the Swedish Minister, Great Britain, 1717; the British Ambassador,

of aliens, apart from particular acts done or threatened to be done by them such as tend to injure or destroy the peace of the state, may constitute a menace to its security, that presence may of itself justify their expulsion. In this country the exercise of the right of expulsion for the commission of a particular act or acts had, up to the passage of the act of March 3d, 1903, rarely, if ever, been exercised.[6] Under the Exclusion and Immigration acts proceedings for the exclusion or expulsion of aliens have invariably been held by the courts to be proceedings not criminal in nature, and deportation not to be punishment for crime. "Deportation," says MR. JUSTICE GRAY, speak-speaking for the court in the case of Fong Yue Ting, *supra,* "is the removal of an alien out of the country, simply because his presence is deemed inconsistent with the public welfare, and without any punishment being imposed or contemplated, either under the laws of the country out of which he is sent, or those of the country to which he is taken." [7]

Expulsion constitutes neither banishment nor extradi-

Spain, 1848; the Spanish Ambassador, France, 1718. *Intrigues against third powers.* The case of General Boulanger, Belgium, 1889; the case of the Count of Cambord, Belgium, 1872; the case of ex-President Castro, France (Martinique), 1909. *Resisting the Law,* Montagnini's case, France, 1906; case of the Apostolic Nuncio, Argentine, 1884. *Anti-militarism.* Case of Hugo Nanni, France; and case of Father Forbes, France, 1892. *Treasonable utterances.* Case of the six Italians, Switzerland, 1901. *Insult to the National Flag.* Ghio's case, France. See Martini l'Expulsion des Etrangers, Chapter on Causes of Expulsion, pages 54 to 80.

[6]Section 3 of the present Immigration Law, as amended by section 2 of the Act of March 26th, 1910, provides for the expulsion of aliens found to be inmates of or connected with houses of prostitution or engaging in similar practices after entering the United States; before its amendment the period in which the alien could be deported was three years after entry, the act "being an inmate of a house of prostitution or practicing prostitution" and the only class of aliens subject to the measure "women or girls."

[7]The Act of March 26th, 1910, provides that any alien who shall have been debarred or deported under its second section and who attempts to return to or enter this country shall be deemed guilty of a misdemeanor and shall be imprisoned for not more than two years.

tion.[8] The distinction between expulsion on the one hand and banishment and extradition on the other is clearly pointed out by a European writer:[9] "Those who have been banished are, like those who are expelled, forced to leave the country; but, whereas those who are subjected to banishment are compelled to depart only when lawfully convicted of a crime which entails banishment as its penalty, those who are expelled are subject to deportation on being served with an official order to that effect..... The Government, on the one hand, issues the order of expulsion (deportation) in due course and at its discretion without any preliminary understanding with the state of which the party expelled is a national; and on the other hand the grounds of expulsion need not be set out in the order, for, on principle, the Government is the sole judge as to the necessity to deport. This absence of prior *entente* with the state to which the deportee belongs results in expulsion being a unilateral act, differing essentially thereby from extradition, with which expulsion is at times confused. Extradition presupposes a prior understanding between states, as a matter of course; it constitutes a bilateral act in the form of a convention agreed upon between two states. When a state extradites a person, or in other words delivers up an individual accused of crime, or who has actually been found guilty of an offense committed outside of its jurisdiction and against the laws of the state which is seeking to have him extradited, and which has the right to determine and to punish his guilt, this is done by force of prior treaties or by virtue of a special agreement between states. When, on the other hand, a state expels,.....it is not because it is under any obligation to do so based on a contract with another state....."

If a sovereign State has the right to expel foreigners

[8]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law. Ed. 905.

[9]Alexis Martini, l'Expulsion des Etrangers, pp. 5 and 6.

from its dominions it has, *a fortiori,* the right to prohibit their entrance into its jurisdiction. "The right of a nation," says MR. JUSTICE GRAY,[10] "to expel or deport foreigners who have not been naturalized or taken any steps towards becoming citizens of the country rests upon the same grounds, and is as absolute and unqualified as the right to prohibit and prevent their entrance into the country;" and again, in the same opinion: "The power to exclude aliens and the power to expel them rest upon one foundation, and are derived from one source, are supported by the same reasons, and are in truth but parts of one and the same power."

While the general expulsion of all foreigners belonging to a given nation has been on more than one occasion justified as a war measure—but even then with hesitation[11]—nevertheless, the power of a nation to exercise the right

[10]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[11] "Wholesale expulsion in war time is an act of defence, a perfectly legitimate measure the legality of which cannot be contested..... Each state may proceed to the wholesale expulsion of the citizens of the other belligerent although they may have taken up their abode within its territory in perfect good faith....." (Bonfils et Fauchille, Man. de dr. int. publ., 5th Ed., n. 1055). It is, however, well understood that expulsion *en masse* will only be resorted to in case of imminent danger. A declaration of war does not *ipso facto* involve the collective expulsion of the subjects of the enemy residing in the state. Although it may be one of the natural results of war it is not a necessary result; moreover, when a state resorts to this measure it must proceed with humanity and give the persons subjected thereto a reasonable time in which to leave the country. (Martini l'Expulsion des Etrangers, p. 88, citing Fiore, Nouv. dr. int. publ., 2d Ed., n. 12, and Heffter, par. 121, p. 267; likewise Bonfils et Fauchille, *ubi supra.*) The states which have exercised this right in war time are France (1870), Turkey, (1897), and the Transvaal (1899-1902). Among those which have refrained from exercising it are, Russia (1854; 1904, except regarding Japanese "in the territories forming a part of the Lieutenancy of the Extreme Orient"); Japan (1894 and 1904-5). Although writers on international law find no difficulty in asserting the existence of the right—and if it exists in peace it certainly must exist in times of war—its result is almost invariably to subject the state exercising it to severe criticism. Hence the appearance of so many "defences" submitted by publicists after the event. See M. Despagnet's article in the Rev. gén. de dr. int. publ., 1900, p. 698; and Martini's comments on the Russian-Japanese war, l'Expulsion des Etrangers.

in time of peace as well as war cannot be denied; but whether justifiable or not would depend on the particular exigency. "If," said the Supreme Court,[12] "the Government of the United States through its legislative department considers the presence of foreigners of a different race in this country who are not assimilated with us, to be dangerous to its peace and security, their exclusion is not to be stopped, because at the time there are no actual hostilities with the nation of which the foreigners are subjects. The existence of war would render the necessity of the proceeding only more obvious and pressing. The same necessity in a less pressing degree may arise when war does not exist, and the same authority which adjudges the necessity in one case may determine it in the other." And the right to exclude or expel all aliens, absolutely or upon certain conditions, in war or in peace, as an inherent and inalienable right of every sovereign nation, essential to its safety, independence and welfare, has received the unqualified sanction of the Supreme Court of the United States in later decisions.[13]

II. Limitations Imposed by International Law on the Exercise of the Right.

Granting that the right to exclude or expel all foreigners, or any class of foreigners, absolutely or upon certain conditions in war or in peace is, inherently, an inalienable right of every sovereign nation, essential to its safety, its independence and its welfare,[14] and that the control of such persons and the right to expel them are too clearly within the essential attributes of sovereignty to be seriously contested,[15] the further question presents itself as to whether, under the law which concedes the existence of

[12]Chae Chan Ping v. United States, 130 U. S. 531, 32 Law Ed. 1068.

[13]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; United States ex rel. Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979.

[14]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[15]Wharton Int. Law Dig., par. 206.

the power, there are imposed any limitations as to the methods of its exercise; the term "limitations" being used in the sense of restrictions upon the exercise thereof adopted as a matter of international custom based upon the recognized expediency existing between all civilized nations, and supported by the weight of authority.

It must be remembered that in international law no foreigner can claim the right of entry or admission to a state. But if the state throws open its ports to the entrance of foreigners, welcomes the immigration of persons of an alien race into its jurisdiction, or in any other way invites strangers to enter its territory, there results, under international law, a duty, self-imposed upon the state, to protect and to vest with rights, in many respects the same as enjoyed by the citizens and subjects of the state,[16] all aliens who may enter in reliance on the invitation extended. But in entering under these circumstances, it is with the implied condition that the rights which the state of domicile is under the obligation to protect are subject to limitation or restriction not only by the existing municipal law of the country but by whatever future enactments the legislative department may provide. At the same time, as stated by Sir Robert Phillimore, "no country has a right to set, as it were, a snare for foreigners; therefore, conditions hostile to their interests or different from general usage must be specifically defined." [17] Vattel has expressed the same idea in stating the principle that "the sovereign must not permit access into his territory for the purpose of luring foreigners into a trap." Hence the principle that the right of expulsion, if exercised at all against aliens who have come to a country having good reason to believe that, as to them, the ordinary procedure in any given case, sanctioned by the civilized countries of the world, would be observed, must not be arbitrarily

[16]Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.
[17]Int. Law, Vol. 2, chap 2.

exercised.[18] This principle is generally accepted not only by European and Pan-American publicists and by the courts of this country, but by successive secretaries of state in passing upon the question as to whether or not the expulsion of American citizens from foreign states was accomplished in contravention of this rule.

"This government," says Mr. Gresham, Secretary of State, to Mr. Smyth, Minister to Hayti,[19] "does not propose to controvert the principle of international law which authorizes every individual State to expel objectionable foreigners or class of foreigners from its territory. The right of expulsion or exclusion of foreigners is one which the United States, as well as many other countries has, upon occasion, exercised when deemed necessary in the interest of the government or its citizens. But this right, although based upon recognized principles of international law, has limitations which the same principles impose. 'Every state is authorized, for reasons of public order, to expel foreigners who are temporarily residing in its territory. But when a government expels a foreigner without cause and in an injurious manner, the state of which this foreigner is a citizen has a right to prefer a claim for this violation of international law, and to demand satisfaction if there is occasion for it.' (Calvo, Dict. Inter. Law, "Expulsion.") . . . . . There is certainly nothing in the law or practice of this country which can be cited as a precedent for the arbitrary expulsion of foreigners without hearing and without cause. The best rule would seem to be that no nation can single out for the expulsion from its territory any individual citizen of a friendly nation without special and sufficient grounds

[18]Pradier Fodéré, Traite de droit international public, par. 1857; Rolin-Jaequemyns Revue du Droit Int., Vol. 20, p. 489; Tchernoff, Protection des Naturaux Résidant à l'Etranger, p. 444 *et seq;* Calvo Dictionnaire du Droit Int. (Title Expulsion); Von Bar, Journal Droit Int. Privé, Vol. 13, p. 6; Heffter, Voelkerrecht, Sec. 62; Bluntschli, Droit Int. Codifié, Arts. 383-400.

[19]Foreign Relations, 1895, Vol. II, p. 801, cited in Moore Int. Law Dig, Vol. IV, p. 83.

therefor. And even when such grounds exist the exclusion should be effected with as little injury to the individual and his property interests as may be compatible with the safety and interests of the country which expels him. That universal sense of right and justice which suggests that no man should be condemned without a hearing would seem to require that the person singled out for expulsion should, as a general rule, first be notified of the charges against him and given an opportunity to refute them.

To again quote Pradier-Fodéré: 'Expulsion is legitimate only so far as it is demonstrated with evidence that the presence of those whom it affects imperils the peace within or without the security of the governors or of the governed; that, in a word, it compromises one of the interests which the state guards. It is necessary that the danger be certain, that the menace be effective; the administration should not recur to this harsh measure except so far as the condition of the individuals who are the object of it inspires real and well-founded disquietude either in the inhabitants of the country or in the government itself, or perhaps even in a friendly government. The universal conscience protests against the arbitrary use of the right of expulsion.' " [20]

In answering the question, "In what manner and within what limits may governments exercise the right of expulsion of foreigners?" Rolin-Jaequemyns has said: [21] "Every state may limit the admission and the residence of foreigners upon its territory by such conditions as it deems necessary. But (he adds) there is another consideration which tends not to annul, but to restrain this exercise of territorial sovereignty. The individual expelled has the

[20]Mr. Sherman, Secretary of State, to Mr. Powell, min. to Hayti, No. 94, Jan. 8th, 1898, MS. Inst. Hayti, III, 622, cited in Moore Int. Law Dig., Vol. IV, p. 91.

[21]Revue de Droit International, Vol. XX, p. 498 *et seq.*, cited in Foreign Relations of the United States, Part II, 1895, p. 776.

double quality of being a man and a citizen of another state. As a human being he has the right to be exempt from needless harsh treatment, and from unjust detriment to his interests; in his quality of citizen of another state he has the right to invoke the protection of his country against unduly rigorous treatment and against spoliation of his property. The act of expulsion ought to conform to its direct, essential object, which is to relieve the soil of an obnoxious guest. The right of national sovereignty does not require or permit more. Generally an official order to leave the country within a specified time is sufficient. If not, force may be employed. But forcible eviction should never assume a gratuitously vexatious character."

This view was relied on by Mr. Olney in a communication sent by him as Secretary of State to Mr. Young, the United States minister to Guatemala in connection with the claim of J. H. Hollander, who had been expelled from Guatemala by an executive decree under circumstances of singular and unnecessary harshness. The Guatemalan Government had expressed the view that it "was not under obligation to allow him (Mr. Young) more or less time to get out of the country, nor to accommodate him in any way. All the practices of international jurisprudence fall down before a law clear that comes immediately from the sovereignty of a nation." [22] To this Secretary Olney replied; "The logical result of that proposition is, that whatever a state by legal formula wills to do, it may do; and that international law obligations are annulled, not infringed, by legalized administrative action in contravention of those obligations..... I construe the language used to mean that, as a rule of international law the right to expel is absolute and inherent in the sovereignty of a state, and that no other state can question the exercise of this right nor the manner of exercising it..... The

[22]Foreign Relations of the United States, *ante;* Venezuelan Arbitrations of 1903—Ralston's Report, p. 700.

modern theory and practice of Christian nations is believed to be founded on the principle that the expulsion of a foreigner is justifiable only when his presence is detrimental to the welfare of the state, and that when expulsion is resorted to as an extreme police measure it is to be accomplished with due regard to the convenience and the personal and property interests of the person expelled."

The conclusion to be drawn from the authorities above referred to is that while a sovereign state has an absolute right to exclude or expel any or all foreigners from its jurisdiction either in time of peace or war, a nation which exercises either right in an arbitrary or unjust manner may render itself thereby liable to a demand for satisfaction on the part of the state whose national has been thus expelled or excluded.

III. The Exercise of the Power in the United States.

A. IN GENERAL.

It has been previously pointed out[23] that international law confers no right upon the citizen or subject of one nation to enter the territory of a foreign sovereign; but that, the permission being once granted, his situation within such foreign jurisdiction as a domiciled alien, or even as a transient, vests in him, generally speaking, and for the time being, the same civil rights which the nationals of the country of domicile possess. "By general international law," said CHIEF JUSTICE FULLER,[24] "foreigners who have become domiciled in a country other than their own acquire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country." At the same time the alien is presumed to enter with the knowledge that precisely because of the fact of his alienage he may be sub-

[23] *Ante*, p. 10.

[24] Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.

jected to municipal laws and regulations peculiarly applicable to him and all others of the class of which he is a member, which may result in imposing upon him burdens to which the native residents of the country are not subjected. In fact the only limitation upon municipal legislation affecting aliens may be said to consist in that it must not be arbitrary or purely capricious in nature, or directed towards him or those in a similar situation merely because they happen to belong to a particular nation. But this principle does not operate to exempt aliens from the effect of municipal regulations made applicable to them as members of a particular class, even though the members of that class happen to belong to one particular nation, provided that the methods adopted by the administration are put in force with the honest object of safeguarding the interests of the nation and of its citizens.

In the United States the power to prohibit the entrance of foreigners into its dominions, or to admit them only in such cases and upon such conditions as Congress may see fit to prescribe, even though they seek admission for the purpose of transit only,[25] is vested in the National Government to which the Constitution has committed the entire control of international relations in peace as well as in war. And, as Congress may admit some and exclude others, so may it expel aliens of a certain class and allow others to remain. Thus, the Act of November 3, 1893,[26] which provided for the extension in favor of Chinese persons generally—but not in favor of Chinese felons—of the period in which Chinese residing in the United States might register was unhesitatingly held constitutional;[27] and it is needless to add that the power to regulate the conditions on which aliens may enter or remain includes the power to designate the ports of entry[28] and to prescribe

[25]Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.
[26]28 Stat. at L. 7.
[27]United States v. Chew Cheong, 61 Fed. 200.
[28]*Ex parte* Li Dick, 174 Fed. 674.

the conditions under which deportation is to be effected.[29] In the United States this power is vested in the political department of the Government and may be exercised either through treaties made by the President or through statutes enacted by Congress.[30] "The sound construction of the Constitution," said MR. JUSTICE GRAY,[31] "must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people."

The source of the power of Congress to make provisions concerning the admission or exclusion of aliens is twofold: first, as the mouthpiece of the United States in its capacity as a sovereign state among the family of nations; second, the power to regulate foreign commerce conferred upon it by section 8 of Article I of the Constitution of the United States.[32]

Said the Supreme Court:[33] "Whether rested on the accepted principles of international law that every sovereign nation has the power as inherent in sovereignty essential to self-preservation to forbid the entrance of foreigners within its domain, or to admit them only in such cases and on such conditions as it may see fit to prescribe, or on the power to regulate commerce with foreign nations which includes the entrance of ships, the importation of goods, and the bringing of persons into the United States, the act before us is not open to constitutional objection"—

[29]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; Lees v. United States, 150 U. S. 476, 37 Law Ed. 1150; Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; Chae Chan Ping v. United States, 130 U. S. 581, 32 Law Ed. 1068.

[30]Ekiu v. United States, *supra.*

[31]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905, quoting CHIEF JUSTICE MARSHALL in McCullough v. Maryland.

[32]Head Money Cases, 112 U. S. 580, 28 Law Ed. 798; Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1156.

[33]United States *ex rel.* Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979.

and held that the Act of 1903,[34] which prohibited the entrance into the United States of alien anarchists, and provided that the question of whether the person seeking admission into the country was in fact both an alien and an anarchist might be finally determined by executive officers, was constitutional.

While the principle is maintained that any alien permitted to enter a foreign country may claim as of right the privileges conferred by the municipal laws thereof—in other words the constitutional provisions and statutory enactments in force therein—this principle applies to its full extent only in cases where the alien has actually lawfully entered and settled in the country for the purpose of establishing his domicile therein, provided furthermore that he does not belong to or become a member of a class subject to the operation of deportation proceedings either through his own act or by any act of the national legislature. It follows that when an alien member of a class admission to which is prohibited by the laws of the state, is prevented from effecting an entrance within its borders, the principle does not apply. No rights conferred either by the constitution or by the municipal law of the country of projected domicile, which can be claimed only on the theory of temporary allegiance in return for temporary protection, can be invoked where, by the very fact of refusing to admit him, the state denies him that protection and refuses the proffered offer of allegiance. At the same time it must be admitted that, being within the jurisdiction of the rejecting state, the alien is for the time being at least, and in partial measure, subject to the provisions of the laws of the state both for the purpose of protection, and for the purpose at least of criminal liability. But it is equally true, and it seems equally clear, that a foreigner so situated cannot generally invoke rights conferred either by the Constitution or by the municipal laws of the state

[34] 32 Stat. at L., Pt. I, p. 1213.

which were conferred with the obvious purpose of applying to persons normally within the sphere of operation of such Constitution or laws. Granting the existence of such laws governing the subject of aliens and covering the situation most frequently presented—that of an alien refused admission and awaiting deportation in accordance with those laws—since the latter in turn depend for their validity if enacted under a constitutional form of government, on the provisions of the paramount law, it is apparent that in so far as the constitutional prohibition may apply to his case, the alien is entitled to their protection. But it is equally true that the mere fact of being within the territorial limits of the United States, and for certain purposes within the jurisdiction of its courts, confers upon the alien no right to invoke each and every guarantee of the Federal Constitution, in support of an alleged right to enter.[35] "He does not become," said the court in the case of Turner v. Williams,[36] "one of those people to whom these things are secured by the Constitution by an attempt to enter forbidden by law. To appeal to the Constitution is to concede that this is a land governed by that supreme law, and as under it the power to exclude has been determined to exist, those who are excluded cannot assert the rights in general obtaining in a land to which they do not belong as citizens or otherwise." Aliens in this situation are considered, so far as their right to invoke the constitutional guarantees is concerned, to be in the same position, although physically within the boundaries of the United States, as if they had been stopped at the limits of the jurisdiction of this country and kept there while their right to enter is in process of determination;[37] and the act itself provides that the mere fact of their detention for

[35] *Ex parte* Lung Wing Wun, 161 Fed. 211; Wong Song v. United States, 144 Fed. 968.

[36] 194 U. S. 279, 48 Law Ed. 979.

[37] United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146.

the purpose of investigation and examination shall not be deemed to constitute a landing,[38] thus following the general trend of judicial decision.[39] It has been held that a Chinese alien seeking admission to this country may invoke the constitutional guarantees against unreasonable and unlawful searches and seizures when his personal letters and papers have been seized unlawfully by custom officials at the port of entry, in order to prevent the contents of such letters and papers being used against him.[40] This, however, has been denied in a recent Federal case;[41] and the Supreme Court of the United States has held in a case in which it was alleged by a Chinese person seeking to enter the United States that on his arrival his baggage and private papers were opened and his person searched by customs inspectors, that if the petitioner had just cause of complaint of the conduct of the collector's subordinates the remedy was not to be found in his discharge on *habeas corpus*.[42]

The principle above set forth applies with equal force to the case of aliens who are expelled within the statutory period fixed by the Immigration Act, on the ground of being unlawfully in the United States. The Act of March 26, 1910,[43] provides that certain persons leading immoral lives, or maintaining connections with persons so addicted of so questionable a character as to make their presence undesirable in the United States, may be deported at any time after entry, even though they may have been duly admitted in the first instance. But in the vast majority of cases the ground of deportation is that the alien has entered the United States in violation of law. It seems plain that persons found to have obtained admis-

[38]Section 16, Act of Feb. 20, 1907.

[39]In re Palagano, 38 Fed. 580.

[40]United States v. Wong Quong Wong, 94 Fed. 832.

[41]*In re* Chin Wah, 182 Fed. 256.

[42]Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917; Lee Gon Yung v. United States, 185 U. S. 306, 46 Law Ed. 921.

[43]36 Stat. at L. 263.

sion into the United States by setting at naught all the regulations of the municipal law adopted with regard to them can scarcely hope to invoke successfully the international law principle before stated, to the effect that, having become residents of the United States, their civil rights are to be measured by those of the rest of the community. That principle is based on the assumption that the sovereign has actually voluntarily extended his protection to the alien who avails himself of the offer; and that by having done so the state is bound to concede to the foreigner civil rights and privileges enjoyed by its own nationals. But the state cannot be said voluntarily to extend its protection to persons who seek it in violation of the expressed law of the state; and it is apparent that no state is under the obligation to accept the allegiance of a person or class of persons barred from its domains. It follows that the mere fact of unlawful residence cannot support the right to invoke the laws or Constitution of the state in proceedings which of themselves constitute the outward manifestation of the state's refusal to continue to accept that temporary allegiance which residence within the dominions of the sovereign, unlawful though it may be, necessarily implies.

As far as invoking those rights in such proceedings is concerned, the alien is merely in the position of an undesirable stranger in the process of being excluded from the enjoyment of those privileges of protection which the nation has the power to bestow. "The power to exclude or expel aliens," says the Supreme Court, "being a power affecting international relations, is vested in the political departments of the Government and is to be regulated by treaties or by acts of Congress, and to be executed by the executive authority according to the regulations so established except so far as the judiciary has been authorized by treaty or by statute or is required by the paramount law

of the Constitution, to intervene.[44] The extent to which either high contracting party to a treaty dealing with the subject of immigration or the exclusion or expulsion of aliens may regulate the admission of nationals of the other into its territory necessarily depends on the stipulations mutually agreed upon.

The only limitation upon the method prescribed by the municipal law—in the United States Acts of Congress or Presidential proclamations promulgated under the authority of Congress—is that they must not violate the fundamental principles of the Federal Constitution. And it may be stated that while prior treaty provisions on the subject are in no way binding on subsequent legislation by Congress in the sense that the national legislature cannot in the exercise of its sovereign powers enact laws different in purpose and effect from pre-existing treaty stipulations, these stipulations will be regarded by the courts as binding upon the nation unless the provisions of the law are such as to show clearly and unequivocally the purpose to supersede and abrogate the articles of the treaty.

B. Regulation of Immigration by Treaty.

1. *The Treaties with China.*

(A.) The Treaty of November 17, 1880.

The first attempt made by the United States to regulate by national agreement the immigration into this country of subjects of a friendly power took the form of the Immigration Treaty between the United States and China, concluded on November 17, 1880, and proclaimed October 5, 1881. Nowhere is there to be found, perhaps, a more concise and at the same time more comprehensive statement of the treaties into which the two countries had entered up

[44]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.

to that time, than in the decision rendered by MR. JUSTICE FIELD, in the case of Chae Chan Ping v. The United States.[45]

"The first treaty between the United States and the Empire of China," says the court, "was concluded on the 3d of July, 1844, and ratified in December of the following year. (8 Stat. at L. 592.) Previous to that time there had been an extensive commerce between the two nations, that to China being confined to a single port. It was not, however, attended by any serious disturbances between our people there and the Chinese. In August, 1842, as the result of a war between England and China, a treaty was concluded stipulating for peace and friendship between them, and, among other things, that British subjects, with their families and their establishments, should be allowed to reside for the purpose of carrying on mercantile pursuits at the five principal ports of the Empire. (Hertslet's Commercial Treaties, Vol. 6, 221.) Actuated by a desire to establish by treaties friendly relations between the United States and the Chinese Empire, and to secure to our people the same commercial privileges which had been thus conceded to British subjects, Congress placed at the disposal of the President the means to enable him to establish future commercial relations between the two countries 'on terms of national equal reciprocity.' (Act of March, 1843, Chap. 90, 5 Stat. at L. 624.) A mission was accordingly sent to China, at the head of which was placed Mr. Caleb Cushing, a gentleman of large experience in public affairs. He found the Chinese government ready to concede by treaty to the United States all that had been reluctantly yielded to England through compulsion. As the result of his negotiations the treaty of 1844 was concluded. It stipulated among other things, that there should be a 'perfect, permanent, and universal peace, and a sincere and cordial amity' between the two nations; that the five principal ports of the Empire should be opened to the citizens of the United States, who should be permitted to reside with their families and trade there, and to proceed with their vessels and merchandise to and from any foreign port and either of said five ports; and while peaceably attending to their affairs should receive the protec-

[45] 130 U. S. 581, 32 Law Ed. 1068.

tion of the Chinese authorities. (Senate Doc. No. 138, 28 Cong. 2d Sess.)

The treaty between England and China did not have the effect of securing permanent peace and friendship between those countries..... In 1856 the two countries were at open war..... As the rights of citizens of the United States might be seriously affected by the results of existing hostilities and commercial intercourse between the United States and China be disturbed, it was deemed advisable to send to China a minister plenipotentiary to represent our government and to watch our interests there. Accordingly Mr. William B. Reed, of Philadelphia was appointed such minister, and instructed, whilst abstaining from any direct interference, to aid by peaceful co-operation the objects the allied forces (Great Britain and France) were seeking to accomplish. (Senate Doc. 47, 35th Cong., 1st Sess.) Through him a new treaty was negotiated for the Chinese government. It was concluded in June, 1858, and ratified in August of the following year. (12 Stat. at L. 1023.) It reiterated the pledges of peace and friendship between the two nations, renewed the promise of protection to all citizens of the United States in China peaceably attending to their own affairs, and stipulated for security for Christians in the profession of their religion. Neither the treaty of 1844 nor that of 1858 touched upon the migration and emigration of the citizens and subjects of the two nations respectively from one country to the other. But in 1868 a great change in the relations of the two nations was made in that respect. In that year a mission from China, composed of distinguished functionaries of that Empire, came to the United States with the professed object of establishing closer relations between the two countries and their people. At its head was placed Mr. Anson Burlingame, an eminent citizen of the United States, who had at one time represented this country as Commissioner to China. He resigned his office under our Government to accept the position tendered to him by the Chinese government..... On its arrival in Washington, additional articles to the treaty of 1858 were agreed upon, which gave expression to the general desire that the two nations and their peoples should be drawn closer together. The new articles, eight in number, were agreed to on the 28th of July, 1868, and ratifications of

them were exchanged at Pekin in November of the following year. (16 Stat. at L. 739.) Of these articles, the fifth, sixth and seventh, are as follows:

'Article 5. The United States and the Emperor of China cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other for the purpose of curiosity, or trade, or as permanent residents. The high contracting parties, therefore, join in reprobating any other than an entirely voluntary emigration for these purposes. They consequently agree to pass laws making it a penal offence for a citizen of the United States, or Chinese subjects to take Chinese subjects either to the United States or to any other foreign country, or for a Chinese subject or citizen of the United States to take citizens of the United States to China or to any other foreign country without their free and voluntary consent, respectively.

'Article 6. Citizens of the United States visiting or residing in China shall enjoy the same privileges, immunities or exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation; and reciprocally, Chinese subjects visiting or residing in the United States shall enjoy the same privileges, immunities, and exemptions in respect to travel or residence as may there be enjoyed by the citizens or subjects of the most favored nation. But nothing herein contained shall be held to confer naturalization upon citizens of the United States in China, nor upon the subjects of China in the United States.

'Article 7. Citizens of the United States shall enjoy all the privileges of the public educational institutions, under the control of the government of China; and, reciprocally, Chinese subjects shall enjoy all the privileges of the public educational institutions under the control of the Government of the United States, which are enjoyed in the respective countries by the citizens or subjects of the most favored nation. The citizens of the United States may freely establish and maintain schools within the Empire of China at those places where foreigners are by treaty permitted to reside; and reciprocally, Chinese subjects

may enjoy the same privileges and immunities in the United States.'

.....The previous treaties of 1844 and 1858 were confined principally to mutual declarations of peace and friendship, and to stipulations for commercial intercourse at certain ports in China and for protection to our citizens whilst peaceably attending to their affairs. It was not until the additional articles of 1868 were adopted that any public declaration was made by the two nations that there were advantages in the free migration or emigration of their citizens and subjects respectively from one country to the other; and stipulations given that each should enjoy in the country of the other, with respect to travel or residence, the 'privileges, immunities, and exemptions' enjoyed by citizens and subjects of the most favored nation....."

After pointing out that the discovery of gold in California in 1849 was followed by a large immigration thither from all parts of the world, and particularly China, which gave rise to a competition between Chinese immigrants of the laboring class and our people, which soon assumed proportions dangerous to the public peace, and after referring to the petition for protective legislation presented by the people of California which took the form of a memorial submitted to Congress in February, 1879, the Court proceeds:

"So urgent and constant were the prayers for relief against existing and anticipated evils, both from the public authorities of the Pacific coast and from private individuals, that Congress was compelled to act on the subject. Many persons, however, both in and out of Congress were of opinion that so long as the treaty remained unmodified, legislation restricting immigration would be a breach of faith with China. A statute was accordingly passed appropriating money to send commissioners to China to act with our minister there in negotiating and concluding by treaty a settlement of such matters of interest between the two Governments as might be confided to them. (21 Stat. at L. 133, chap. 88.) Such commissioners were appointed and as the result of their negotiations, the Supplementary

Treaty of November 17th, 1880, was concluded and ratified in May of the following year. (22 Stat. at L. 826.)"

This treaty contains four articles, which read as follows:

Article I.

Whenever in the opinion of the Government of the United States, the coming of Chinese laborers to the United States, or their residence therein, affects or threatens to affect the interests of that country, or to endanger the good order of the said country or of any locality within the territory thereof, the Government of China agrees that the Government of the United States may regulate, limit, or suspend such coming or residence, but may not absolutely prohibit it. The limitation or suspension shall be reasonable and shall apply only to Chinese who may go to the United States as laborers, other classes not being included in the limitations. Legislation taken in regard to Chinese laborers will be of such a character only as is necessary to enforce the regulation, limitation or suspension of immigration, and immigrants shall not be subject to personal maltreatment or abuse.

Article II.

Chinese subjects, whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants, and Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord, and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation.

Article III.

If Chinese laborers, or Chinese of any other class, now either permanently or temporarily residing in the territory of the United States, meet with ill treatment at the hands of any other persons, the Government of the United States will exert all its power to devise measures for their protection and to secure to them the same rights, privileges, immunities and exemptions as may be enjoyed by the citizens or subjects of the most favored nation and to which they are entitled by treaty.

Article IV.

The high contracting powers having agreed upon the foregoing articles, whenever the Government of the United States shall adopt legislative measures in accordance therewith, such measures will be communicated to the Government of China. If the measures as enacted are found to work hardship upon the subjects of China, the Chinese minister at Washington may bring the latter to the notice of the Secretary of State of the United States who will consider the subject with him; and the Chinese Foreign Office may also bring the matter to the notice of the United States minister at Peking and consider the subject with him to the end that mutual and unqualified benefit may result.....

In commenting on the purpose and effect of the treaty of Nov. 17, 1880, the Supreme Court in an early case[46] expressed itself as follows: "By the treaty of 1868 subjects of China were entitled without restriction to come to this country for purposes of curiosity or trade or as permanent residents. But in deference to the opinion of our Government that the presence of Chinese laborers might be injurious to the public interests, or might endanger good order in our land, China agreed in the treaty of 1880, to such modifications of previous treaties as would enable the United States to regulate, limit or suspend their coming or residence without absolutely prohibiting it; such limitation or suspenson to be reasonable in its character. As to certain classes of Chinese it was distinctly provided that they should be permitted to go and come of their own free will, and be accorded all the rights, privileges, immunities and exemptions that are granted to citizens and subjects of the most favored nation. Those classes were: (1st) Chinese subjects whether proceeding to the United States as teachers, students, merchants, or from curiosity, together with their body and household servants. (2d) Chinese laborers who were in this country at the date of the treaty. Upon the exercise, by these particular classes,

[46]Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770.

of the rights of free ingress and egress, no limitation in respect of time was imposed by the treaty; in other words, the enjoyment of the right to go and come was not made to depend upon how often they went out of the country nor how long they remained away before returning." The government contended in this case that a Chinese laborer domiciled in the United States but temporarily absent when the treaty went into effect could claim no right to re-enter thereunder in the absence of the certificate on which the right of members of the laboring class to enter was made to depend by the Act of 1882; and it was implied in argument that in the judgment of Congress the treaty did not secure to any Chinese laborer the right of going and coming of his own free will, except to those in this country at the date of the treaty who remained here continuously until the Act of 1882, enacted for the avowed purpose of faithfully executing the treaty,[47] was passed. The court said: "But the treaty is not subject to any such interpretation. To give it that interpretation would be, in effect, to interpolate in its second article, after the words 'Chinese laborers who are now in the United States' the words 'and who shall continue to reside therein.' The plaintiff in error left this country after the ratification of the treaty, having the right, secured by its articles, to return, of his own free will, without being subjected to burdens or regulations that materially interfere with its enjoyment." [48]

It was judicially recognized at an early date that the treaty does not purport to give the United States the right to prohibit absolutely the coming of Chinese laborers but merely to restrict their immigration, and authorize legislation by Congress to this effect,[49] and the power to exclude expressed therein was held to apply not only to Chinese

[47] *Ibid*, p. 549.

[48] And see *ex parte* Ng Quong Ming, 135 Fed. 378; Jung Ah Lung v. United States, 124 U. S. 621, 31 Law Ed. 591.

[49] *In re* Ah Lung, 18 Fed. 28; United States v. Yong Yeu, 83 Fed. 832.

laborers coming from China but from all other parts of the world.[50] It is unnecessary to add in this connection that while the United States could not claim under the treaty absolutely to prohibit the immigration of Chinese, neither the power to restrict nor to prohibit the entrance of aliens into this country finds its source in treaty obligations. It always exists as an inherent trait of national sovereignty, not to be abandoned or surrendered by the nation.[51] By agreeing to the conditions of the first article of the treaty, the treaty making power went no further than to pledge this country to exercise its already existing right to exclude Chinese laborers only to the extent of temporarily restricting their coming.

In an early Federal case it was decided that since Article II provides that servants of the members of the exempt classes might accompany them it necessarily follows that the same right is thereby accorded their wives and minor children[52] and the Supreme Court has held[53] that "it is not possible to presume that the treaty, in omitting to name the wives of those who by the second article were entitled to admission meant that they should be excluded. If not, then they were entitled to admission because they were such wives, although not in terms mentioned in the treaty."

The fact that Article IV of the treaty provides that in case of hardship upon subjects of China in the United States the Chinese minister in Washington shall bring the matter to the attention of the Secretary of State of the United States does not limit the claimant to a diplomatic remedy; the courts are always at his disposal.[54]

[50] *In re* Ah Lung, 18 Fed. 28.

[51] Chae Chan Ping v. United States, 130 U. S. 581, 32 Law Ed. 1068.

[52] *In re* Chung Toy Ho, 42 Fed. 398.

[53] United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 544.

[54] United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591.

(B.) The Treaty of December 8, 1894.

On March 12, 1888, a new treaty between the United States of America and the Emperor of China was signed by the high contracting parties, but in the end rejected by the Chinese Government. But on December 8, 1894, the Convention Regulating Chinese Immigration concluded on the 17th of March preceding was duly proclaimed. By the terms of this treaty, the coming of Chinese laborers to the United States was absolutely prohibited under the conditions therein specified. This treaty terminated Dec. 7th, 1904, on notice being given by the Chinese Government. The first five articles of the treaty read as follows:

Article I.

The High Contracting Parties agree that for a period of ten years, beginning with the date of the exchange of the ratifications of this Convention, the coming, except under the conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited.

Article II.

The preceding article shall not apply to the return to the United States of any registered Chinese laborer who has a lawful wife, child or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement. Nevertheless every such Chinese laborer shall, before leaving the United States, deposit, as a condition of his return, with the collector of customs of the district from which he departs, a full description in writing of his family, or property, or debts, as aforesaid, and shall be furnished by said collector with such certificate of his right to return under this treaty as the laws of the United States may now or hereafter prescribe and not inconsistent with the provisions of this treaty, and should the written description aforesaid be proved to be false, the right of return thereunder, or of continued residence after return, shall in each case be forfeited. And such right of return to the United States shall be exercised within one year from the date of leaving the United States; but such right of return to the United States may be extended for an additional period,

not to exceed one year, in cases where by reason of sickness or other cause of disability beyond his control, such Chinese laborer shall be rendered unable sooner to return —which facts shall be fully reported to the Chinese consul at the port of departure, and by him certified, to the satisfaction of the collector of the port at which such Chinese subject shall land in the United States. And no such Chinese laborer shall be permitted to enter the United States by land or sea without producing to the proper officer of the customs the return certificate herein required.

Article III.

The provisions of the Convention shall not affect the right at present enjoyed of Chinese subjects, being officials, teachers, students, merchants or travelers for curiosity or pleasure, but not laborers, of coming to the United States and residing therein. To entitle such Chinese subjects as are above described to admission into the United States, they may produce a certificate from their government or the government where they last resided viséd by the diplomatic or consular representative of the United States in the country or port whence they depart.

It is also agreed that Chinese laborers shall continue to enjoy the privilege of transit across the territory of the United States in the course of their journey to or from other countries, subject to such regulations by the Government of the United States, as may be necessary to prevent said privilege of transit from being abused.

Article IV.

In pursuance of Article III of the Immigration Treaty between the United States and China, signed at Peking on the 17th day of November, 1880 (the 15th day of the tenth month of Kwanghsu, sixth year,) it is hereby understood and agreed that Chinese laborers or Chinese of any other class, either permanently or temporarily residing in the United States, shall have for the protection of their persons and property all rights that are given by the laws of the United States to citizens of the most favored nation, excepting the right to become naturalized citizens. And the Government of the United States reaffirms its obliga-

tion, as stated in said Article III, to exert all its power to secure protection to the persons and property of all Chinese subjects in the United States.

Article V.

The Government of the United States, having by an Act of the Congress, approved May 5, 1892, as amended by an Act approved November 3, 1893, required all Chinese laborers lawfully within the limits of the United States befor the passage of the first-named act to be registered as in said acts provided, with a view of affording them better protection, the Chinese Government will not object to the enforcement of such acts, and reciprocally the Government of the United States recognizes the right of the Government of China to enact and enforce similar laws or regulations for the registration, free of charge, of all laborers, skilled or unskilled (not merchants as defined by said Acts of Congress), citizens of the United States in China, whether residing within or without the treaty ports.

And the Government of the United States agrees that within twelve months from the date of the exchange of the ratifications of this Convention, and annually thereafter, it will furnish to the Government of China registers or reports showing the full name, age, occupation, and number or place of residence of all other citizens of the United States, including missionaries, residing both within and without the treaty ports of China, not including, however, diplomatic and other officers of the United States residing or traveling in China upon official business, together with their body and household servants."

It was generally contended in the case of United States v. Lee Yen Tai[55] that the treaty covered the whole subject of Chinese immigration and by implication was intended to be a substitute for the prior laws and treaties on the subject which it repealed by implication; and specially that there was no authority under it for deporting the appellee under the warrant of a United States commissioner who had ordered him deported after finding that he was unlawfully in this country in accordance with the provisions of the Act of 1892. But the court held that the

[55]185 U. S. 213, 46 Law Ed. 878.

act in question was in perfect harmony with the treaty and could be enforced without affecting or impairing any right secured thereby.

Again it was contended in the cases of Ah How v. United States[56] and Tom Hong v. United States[57] that the treaty, when considered in connection with the Act of April 29, 1902,[58] continuing all laws in force "so far as the same are not inconsistent with the treaty obligations" enlarged the rights of Chinese to remain in the United States by doing away with their obligation to prove their right to remain according to sections 3 and 6 of the Act of 1892. But the court said, in the Ah How case, that Article IV of the treaty "could not have been supposed to promise that special measures theretofore taken should not be construed in force for the purpose of ascertaining the very question whether the laborers were lawfully residing in the United States or not..... But it is enough to say that Article V expressly refers to the Act of 1892 as amended by the Act of 1893, and states that the Chinese Government will not object to the enforcement of those acts." In the Tom Hong case, the court refers to this question as having been "disposed of" in the case just cited.

It has been held that where Article II provides for the granting of return certificates to Chinese laborers visiting China, who have property in this country of the value of one thousand dollars, what is required is that he shall be worth the property in question at the time of his return to the United States—not merely at the time of his departure for China.[59]

Article III provides that members of the exempt classes "may" produce a certificate from their government or the government where they last resided properly viséd to entitle them to admission into the United States. In the

[56]Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.
[57]Tom Hong v. United States, 193 U. S. 517, 48 Law Ed. 772.
[58]Chap. 641, 32 Stat. at L. 176.
[59]*In re* Ong Lung, 125 Fed. 814.

case of United States v. Gue Lim,[60] the Government contended that the purport of the Article was that all Chinese of the exempt classes were under the obligation of producing the certificates, and, therefore, that the wife and minor children of a Chinese merchant domiciled here, who had been admitted in 1897 without producing the certificate in question were unlawfully in the United States. The court decided that the treaty of 1894 did not alter the result flowing from the treaty of 1880 and the Act of 1884. That treaty made no provisions for the presentation of certificates by members of the exempt classes, but the Act of 1882 amended by that of 1884 provided not only that such certificate should be presented but that it should constitute the only evidence of the applicant's right to enter. "Although," said the court, "the third article of the treaty of 1894 does speak of certificates for Chinese subjects therein described, who already enjoy the right to enter the country, the question recurs whether the certificate of the husband who himself enjoys the right is not enough for the wife, the fact being proved or admitted that she is such wife. Possibly the result of the Treaty of 1894 may be held to be, instead of simply prohibiting the entrance of Chinese laborers, to restrict the right of entry to those classes who are specially named in the third article of the treaty. But the question would still remain whether the wives of the members of the classes privileged to enter were not entitled themselves to enter by reason of the right of the husband and without the certificate mentioned in the Act of 1884." This question the court decided in the affirmative both as to the wives and minor children of members of the exempt classes; and the third article of the treaty was held not to create new obligations regarding the presentation of the certificate.

In Lee Lung v. Patterson,[61] the Supreme Court again had occasion to interpret Article III under a state of facts

[60]United States v. Gue Lim, 176 U. S. 459, 44 Law Ed. 544.

[61]Lee Lung v. Patterson, 186 U. S. 168, 46 Law Ed. 1108.

analogous to that presented in the Gue Lim case. Here a Chinese woman alleging herself to be the wife of a Chinese merchant domiciled in the United States sought in company with the alleged husband and an alleged minor child, admission into this country. The mother and daughter each presented the "section six" certificate required by the Act of 1884. They were refused admission by the collector of customs on the ground that the certificate was irregular, that the wife was a plural wife, and that the relationship of the alleged daughter was not duly established. The decision was sustained by the Secretary of the Treasury, the petition in habeas corpus filed in the United States District Court for the District of Oregon was denied, and the parties appealed to the Supreme Court of the United States. They contended that Article III prescribed the only evidence which a member of the exempt class of Chinese must produce, and abrogates the Act of 1882 and those amendatory thereof, as well of the treaty of 1880. The court, on the grounds stated in the Lee Yen Tai decision,[62] held that such an interpretation of Article III was incorrect, and that the certificate which members of the exempt classes might produce was subject to controversion by the Government.

It may not be out of place to refer in this connection to the different state of facts presented by the Gue Lim and Lee Lung cases. In the Gue Lim case, the petitioner was not refused a landing by the executive officers; in the Lee Lung case, she was. Gue Lim was arrested on the charge of being a Chinese laborer without the registration certificate required by the Act of 1892; Lee Lung for attempting to enter this country on an irregular certificate. Gue Lim was admitted to be the lawful wife of her alleged husband; this was denied as to Lee Lung. The question of Gue Lim's right to remain as presented to the Supreme Court was purely one of law; that of Lee Lung to enter—apart from the question raised as to the effect of Article III of the Treaty of 1894 on prior laws and treaties—a

simple finding of fact. Insofar as the facts as found by the collector and affirmed by the Secretary of the Treasury affected the question of the jurisdiction of administrative officers the Court held in the Lee Lung case that the latter's jurisdiction was not lost "by not giving sufficient weight to evidence or by rejecting proper evidence or by admitting that which is improper." The absence of a fair hearing does not appear to have been urged, although it was alleged that the collector had "ignored" the certificates. But the term "ignore" was apparently used in the sense that the collector had refused to concede them paramount evidentiary effect over all the other evidence presented; and this the court held, he was not obliged under Article III of the Treaty of 1894 to do.

Nor is the decision in the later case of Lim Hop Fong[63] in conflict with the result reached in the foregoing opinion. There the facts showed that the plaintiff in error had been granted a certificate by the proper authority at Macao, whence he came, in which he was described as a student. He was arrested on the charge of being a Chinese laborer unlawfully in the United States, and ordered deported as such after a hearing before the United States commissioner. After finding that he had presented as evidence of his exempt status the certificate prescribed by Article III of the treaty, the court said: "When this young man entered a port of the United States in July, 1899, he presented such a certificate duly issued and viséd by the consular representative of the United States. Upon application for admission this certificate is prima facie evidence of the facts set forth therein.[64] This certificate is the method which the two countries contracted in the treaty should establish a right of admission of students and others of the exempted classes into the United States, and

[62] *Ante*, p. 31.

[63] Lim Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.

[64] 22 Stat. at L. 58, sec. 6, chap. 126; U. S. Comp. Stat. 1901, p. 1307; 33 Stat. at L. 428, chap. 1630.

certainly it ought to be entitled to some weight in determining the rights of the one thus admitted. While this certificate may be overcome by proper evidence, and may not have the effect of a judicial determination, yet, being made in conformity to the treaty, and upon it the Chinaman having been duly admitted to a residence in this country, he cannot be deported, as in this case, because of wrongfully entering the United States upon a fraudulent certificate, unless there is some competent evidence to overcome the legal effect of the certificate. In this record we can find no competent testimony which would overcome such legal effect of the certificate, and the plaintiff in error was therefore wrongfully ordered to be deported."

Article III has been further interpreted by the Supreme Court with special regard to its effect on the right of administrative offiicers to determine whether or not Chinese laborers applying for admission for purposes of transit shall be allowed to enter. In the case of Fok Young Yo v. United States,[65] the court said: "The first article of the Treaty of December 8, 1894, provides that 'the coming, except under conditions hereinafter specified, of Chinese laborers to the United States shall be absolutely prohibited.' The second paragraph of Article III reads: 'It is also agreed that Chinese laborers shall continue to enjoy the privileges of transit across the territory of the United States in the course of their journey to or from other countries, subject to such regulations by the Government of the United States as may be necessary to prevent said privileges from being abused.' We regard this as explicitly recognizing existing regulations, and as assenting to their continuance and to such modification of them as might be found necessary to prevent abuse. It dealt with the subject specifically and was operative without an Act of Congress to carry it into effect. The Treaty of 1880,[66] in declaring in respect of the coming of Chinese laborers

[65]Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.
[66]22 Stat. at L. 826.

into this country that the Government of the United States might 'regulate, limit or suspend such coming or residence' did not refer to the privilege of transit, and, as it was not self-executing, the Act of May 6, 1882, was passed to carry the stipulation into effect. But the provision of this treaty applicable here, in recognizing the privilege of transit and providing that it should continue, proceeded on the ground of its existence and continuance under governmental regulations, and no act of Congress was required..... So, in the case before us, the treaty manifestly operated to commit the subject of transit to executive regulation and determination; and by the then, as well as the present, regulations, the final decision as to permitting transit was devolved on the collector of customs, and no appeal to the Secretary was provided for. It appears from the official documents referred to on the argument that the Treasury Department has 'held that neither the treaty nor the laws, relating to the exclusion of Chinese, either expressly or by implication, give to Chinese persons refused the privilege of transit the right of appeal;' but possession of the power to grant an appeal, or to supervise the action of the collector in some other appropriate way, in circumstances demanding intervention, has not been disavowed."

2. *The Most Favored Nation Clause as Affecting the Operation of the Exclusion and Immigration Laws.*

(A.) The Treaties with China.

Attention may be called to arguments which have been presented on behalf of aliens seeking to enter or remain in this country to the effect that the existence of the most favored nation clause which appears in the fourth article of the Treaty with China in 1894, relieves Chinese persons from the operation of certain provisions of the Chinese Exclusion Act. It is stipulated in that article that "Chinese laborers or Chinese of any other class either per-

manently or temporarily residing in the United States shall have for the protection of their persons or property all rights that are given by the laws of the United States to citizens of the most favored nation excepting the right to become naturalized citizens." The first article of the Japanese Treaty of 1894 provides that "in whatever relates to the rights of residence and travel.....the citizen or subject of each contracting party shall enjoy in the territories of the other the same privileges, liberties and rights.....as.....citizens or subjects of the most favored nation" and the clause appears in still other articles of the treaty. The Treaty of Friendship, Commerce and Navigation between the United States and Paraguay of 1859 contains provisions by which in the matter of protection of person, and property, the citizens of either country shall enjoy in the territory of the other the rights of native citizens. In the Ah How case,[67] attention was called to the Japanese and Paraguayan treaties whereby the United States guarantees to citizens of those countries the rights and privileges of native citizens in access to the courts and in the defence of their rights; and it was contended that the treaty with China of 1894 in connection with the Act of April 29, 1902, which continued the laws relating to Chinese immigration then in force so far as they were not inconsistent with treaty obligations, could not be so construed as to leave the burden of proof on Chinese persons to establish their right to remain in this country. In answer to this contention the court said that section 3 of the Act of May 6, 1892, under which appellants were ordered deported by a United States commissioner, had been upheld "by this court, since the treaty and after the passage of the act," and proceeded to point out that, in any event the Chinese government bound itself by the terms of the treaty not to object to the enforcement of the act in question.

[67] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.

(B.) The Treaty with Denmark of May 6, 1826.

The United States Court of Claims had the same general question before it in the case of Thingvalla v. United States,[68] where the owners of a Danish ship claimed that head money exacted on account of immigrants was illegally exacted, and should be refunded. But the court held that the exaction fell within the Act of August 3, 1882,[69] and refused to be convinced by the argument that the "native citizen or subject clause" of the treaty between the United States and Denmark of 1826 affected the case.

(C.) The Treaty with Italy of April 29, 1871.

The treaty of commerce and navigation with Italy ratified April 29, 1871,[70] provides in its twenty-third article that "the citizens of either party shall have free access to the courts of justice, in order to maintain and defend their own rights, without any other conditions, restrictions, or taxes than such as are imposed upon the natives; they shall, therefore, be free to employ, in defense of their rights, such advocates, solicitors, notaries, agents and factors as they may judge proper, in all their trials at law, and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals, in all cases which may concern them; and likewise at the taking of all examinations and evidences which may be exhibited in the said trials." In the case of United States ex rel. Buccino et al. v. Williams,[71] it was contended that the board of special inquiry in examining into the qualifications of an alien seeking admission to this country without giving him an opportunity to defend by counsel deprived him of rights secured by the treaty. But the court said, "These boards of inspectors are not 'courts

[68] 24 Ct. Cl. 255.
[69] C. 376, 22 Stat. 214.
[70] 17 Stat. at L. 856.
[71] 190 Fed. 897.

of justice,' nor are the examinations by them of incoming aliens touching their qualifications 'trials at law.' There is nothing in the treaty which secures to Italian aliens seeking to enter this country any rights superior to those possessed by aliens of other races."

(D.) The Treaty with Japan of March 21, 1895.

By the Act of August 18, 1894, it was provided that wherever an alien was excluded from admission into the United States under any law or treaty then existing or thereafter to be made, the excluding decision of the appropriate executive officer was to be final unless reversed on appeal to the Secretary of the Treasury. Thereafter came the treaty between this country and Japan concluded November 23, 1894, and proclaimed March 21st, 1895, which was to go into operation on July 17, 1899. It was provided by the first article that "the citizens or subjects of each of the two high contracting parties shall have full liberty to enter, travel, or reside in any part of the territories of the other contracting party, and shall enjoy full and perfect protection for their persons and property. They shall have free access to the courts of justice in pursuit and defence of their rights; they shall be at liberty equal with native citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects;[72] and by the second article, "it is, however, understood that the stipulation contained in this and the preceding article do not in any way affect the laws, ordinances and regulations with regard to trade, the immigration of laborers, police and public security which are in force or which may hereafter be enacted in either of the two countries." In the case of Yamataya v. Fisher,[73]

[72] 29 Stat. at L. 849.

[73] 189 U. S. 86, 47 Law Ed. 721.

a subject of Japan, after having effected an entrance into this country, was arrested on a warrant of the Secretary of the Treasury issued under the authority of the Act of October 19, 1888,[74] and ordered deported on the ground that she was a public charge who had been permitted to land contrary to the provisions of the Act of March 3, 1891.[75] It was contended that the appellant was vested with the right to enter irrespective of the prohibitions of existing immigration acts by virtue of the Treaty of 1895 with Japan, but the court said: "From the above acts of Congress it appears that among the aliens forbidden to enter the United States are those of whatever country who are 'paupers, or persons likely to become a public charge.' We are of opinion that aliens of that class have not been given by the treaty with Japan full liberty to enter or reside in the United States; for that instrument expressly excepts from its operation any ordinance or regulation relating to 'police or public security.' A statute excluding paupers or persons likely to become a public charge is manifestly one of police and public security. Aside from that specific exception we should not be inclined to hold that the provision in the treaty with Japan that the citizens or subjects of each of the two countries should have 'full liberty to enter, travel or reside in any part of the territories of the other contracting party' has any reference to that class, in either country, who, from their habits or condition, are ordinarily or properly the object of police regulations designed to protect the general public against contact with dangerous or improper persons."

C. EFFECT ON EXISTING TREATIES OR LAWS OF SUBSEQUENT LAWS OR TREATIES.

Bonfils says: "A state has the right to expel from its territory aliens individually or collectively unless treaty

[74] 25 Stat. at L. 565.
[75] 26 Stat. at L. 1084.

provisions stand in the way....." [76] This amounts to an assertion of the general proposition that nations dealing with each other in good faith will live up to the terms of agreements made between them when such agreements deal in whole or in part with the admission or exclusion of nationals of the other contracting state. But since the exclusion or expulsion of foreigners, either individually or collectively, may be adopted by a state as the proper means of self preservation and in the public interest of the community, it is apparent that no state can maintain its sovereignty and at the same time barter away by treaty or otherwise any power on the exercise of which its preservation and national integrity may, by any possibility depend. It has long since been held that treaties are subject to abrogation by subsequent acts of Congress, and, as expressions of the will of the people of the United States, are no more binding than Congressional acts. Where the terms of an act of Congress passed subsequent to the treaty are so clearly in contravention and derogation of the stipulations of the former as to leave no room for interpretation, and where the only point at issue is whether or not Congress has the power to abrogate by legislative action agreements with sister states, the courts have expressed no doubt of its ability to do so.

"A treaty," says CHIEF JUSTICE MARSHALL,[77] "is in its nature a contract between two nations, not a legislative act. It does not generally affect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to the acts of the legislature, whenever it ope-

[76]Manuel du Droit Int. Pub. Par. 442, cited in Moore Int. Law Dig., Vol. IV, p. 68.

[77]Foster and Elam v. Neilson, 2 Peters 254, 314, 7 Law Ed. 415, 435.

rates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract—when either of the parties engages to perform a particular act—the treaty addresses itself to the political, not the judicial, department; and the legislature must execute the contract before it can become a rule for the court."

In the case of the Cherokee Tobacco v. United States[78] it was contended that the one hundredeth and seventh section of the Act of July 20, 1868, imposing taxes on distilled spirits, tobacco, and other commodities could not apply to the Cherokee nation, because to do so would be to violate the tenth article of the existing treaty with that nation. After citing the second section of the fourth article of the Constitution which declares that the Constitution, the laws of the United States and all treaties made under its authority, shall be the supreme law of the land, the court proceeds: "It need hardly be said that a treaty cannot violate the Constitution or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress when in conflict is not settled by the Constitution, but the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress and an act of Congress may supersede a prior treaty."[79]

This question first came up for the Supreme Court's consideration in its application to the immigration statutes in the case of Chew Heong v. United States;[80] but in a sense indirectly, since the court there held that the Act of May 6, 1882,[81] as amended by that of July 5, 1884,[82] could not, upon analysis of its terms, and particularly in view of the fact that its avowed purpose was to carry out objects of

[78]11 Wallace 616, 20 Law Ed. 227.

[79]Citing Foster v. Neilson, 2 Pet. 314; Taylor v. Morton, 2 Curt. 454; The Clinton Bridge, 1 Wool. 155.

[80]112 U. S. 536, 28 Law Ed. 77.

[81]22 Stat. at L. 58.

[82]23 Stat. at L. 115.

the treaty with China of 1880, be interpreted as intending to "disregard the plighted faith of the Government" not to interfere with the rights of Chinese laborers domiciled in this country at the time the treaty went into effect. There the court adverted to the maxim of law that "treaties of every kind are to receive a liberal interpretation according to the intention of the contracting parties, and are to be kept in a most scrupulous good faith;" and remarked that "aside from the duty imposed by the Constitution to respect treaty stipulations when they become the subject of judicial proceedings, the court cannot be unmindful of the fact that the honor of the Government and people of the United States is involved in every inquiry whether rights secured by such stipulations shall be recognized and protected."

In the case of Edye v. Robinson,[83] decided on the same day, it was contended that the Immigration Act of 1882,[84] imposing a head tax on foreigners coming to this country, was in violation of numerous treaties entered into by the Government with friendly nations. While the court was not satisfied that any of these treaties were violated by the act of Congress in question it took occasion to express the opinion that in so far as its provisions might be found to be in conflict with the stipulations of foreign treaties they must prevail in all the judicial courts of the United States. Said MR. JUSTICE MILLER: "A treaty, then, is a law of the land as an act of Congress is, whenever its provisions prescribe a rule by which the rights of a private citizen or subject may be determined. And when such rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. But even in this aspect of the case there is nothing in this law which makes it irrepealable or unchangeable. The Constitution gives it no superiority over an act of Congress in this respect,

[83] One of the Head Money cases, 112 U. S. 580, 28 Law Ed. 798.
[84] 22 Stat. at L. 214.

which may be repealed or modified by an act of a later date. Nor is there anything in its essential character or in the branches of the Government by which the treaties are made which gives it this superior sanctity. A treaty is made by the President and the Senate. Statutes are made by the President, the Senate and the House of Representatives. The addition of the latter body to the other two in making a law certainly does not render it less entitled to respect in the matter of its repeal or modification than a treaty made by the other two. If there be any difference in this regard, it would seem to be in favor of an act in which all three of the parties participate..... In short, we are of opinion that, so far as a treaty made by the United States with any foreign nation can become the subject of judicial cognizance in this country, it is subject to such acts as Congress may pass for its enforcement, modification or repeal." [85]

A striking example of the abrogation of treaty rights by subsequent congressional legislation is afforded by the passage of the Act of October 1, 1888.[86] By the treaty of 1880 with China, Chinese laborers who had been living in the United States prior to the date of the ratification of the treaty, or who had arrived there within ninety days thereafter, were expressly given the right to come and go at their pleasure. The Act of 1882 as amended by that of 1884,[87] provided for the issuance of a return certificate to any Chinese laborer residing in the United States which, on presentation at the time of his arrival from a temporary absence in China or elsewhere, authorized him to re-enter the country. The Act of October 1, 1888, provided in effect that no Chinese laborer, whether or not he had left the United States prior to the passage of that act or had obtained and had in his possession the return certificate provided by the preceding acts should be allowed to enter the

[85] And see 158 U. S. 584, 130 U. S. 581, 142 Fed. 128.

[86] 25 Stat at L. 504.

[87] 22 Stat. at L. 58, 23 Stat. at L. 115.

United States. "The validity of this act," says MR. JUSTICE FIELD,[88] "as already mentioned is assailed as being in effect an expulsion from the country of Chinese laborers in violation of existing treaties between the United States and the government of China, and of rights vested in them under the laws of Congress. The objection that the act is in conflict with the treaties was earnestly pressed in the court below, and the answer to it constitutes the principal part of its opinion. (36 Fed. Rep. 431.) Here the objection made is that the Act of 1888 impairs a right vested under the treaty of 1880 as a law of the United States, and the statutes of 1882 and of 1884 passed in execution of it. It must be conceded that the Act of 1888 is in contravention of express stipulations of the Treaty of 1868 and of the Supplemental Treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater obligation than the act of Congress. By the Constitution, laws made in pursuance thereof and treaties made under the authority of the United States are both declared to be the supreme law of the land, and no paramount authority is given one over the other. A treaty, it is true, is in its nature a contract between nations and is often merely promissory in its character, requiring legislation to carry its stipulations into effect. Such legislation will be open to future appeal or amendment. If the treaty operates by its own force and relates to a subject within the power of Congress, it can be deemed in that particular only the equivalent of a legislative act, to be repealed or modified at the pleasure of Congress. In either case the last expression of the sovereign will must control.....
It will not be presumed that the legislative department of the government will lightly pass the laws which are in conflict with the treaties of the country; but that circumstances may arise which would not only justify the Government in disregarding their stipulations, but demand in

[88]Chae Chan Ping v. United States, 130 U. S. 581, 32 Law Ed. 1068.

the interests of the country that it should do so there can be no question." And in a later case the Supreme Court said that it is impossible to hold that under any treaties or acts of Congress a Chinese laborer acquired any right to remain in the United States except by sufferance of Congress subject to its power to expel him or order him deported whenever in its judgment that removal is necessary for the public welfare.[88a]

In the case of Lem Moon Sing v. United States,[89] a Chinese person claiming to be a merchant left the United States prior to the passage of the Act of August 18, 1894, which provided that the decision of any administrative officer excluding any alien seeking to enter the United States under any law or treaty would be final as to the right of the alien to enter. This act was passed in the absence of the applicant and on his return he was denied admission by the executive officers. It was contended on his behalf that he had acquired a commercial domicile in the United States prior to the passage of the act in question, and that the acquisition of this domicile lawfully acquired and lawfully maintained carried with it the vested right to return for the purpose of maintaining the same. The court held that by the provsions of the Act of 1894, Congress had taken away from the courts the power to inquire under the circumstances into the question as to whether or not the applicant was entitled under any law or treaty to enter the United States; and in passing on the question of Congress' right to enact laws in abrogation of prior treaties, said: "If the Act of 1894 thus construed takes away from the alien any right given by previous laws or treaties to reenter the country the authority of Congress to do even that cannot be questioned."

"That it was competent," says the Supreme Court in the

[88a] Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 698.
[89] 158 U. S. 534, 39 Law Ed. 1082.

case of United States v. Lee Yen Tai,[90] "for the two countries by treaty to have superseded a prior act of Congress on the same subject is not to be doubted; for otherwise the declaration in the Constitution that a treaty concluded in the mode prescribed by that instrument shall be the supreme law of the land, would not have due effect. As Congress may by statute abrogate so far at least as this country is concerned, a treaty previously made by the United States with another nation, so the United States may by treaty supersede a prior act of Congress on the same subject..... Nevertheless, the purpose by statute to abrogate the treaty, or any designated part of a treaty, or of the purpose by treaty to supersede the whole or a part of an act of Congress, must not be lightly assumed, but must appear clearly and distinctly from the words used in the statute or in the treaty." [91]

Since treaties that are self-executing, or treaties supplemented by acts of Congress constitute, together with the Constitution and acts of Congress the supreme law of the land, they are, while in force, and to the extent of their provisions, the authoritative expression of the nation as to the rights and obligations conferred upon aliens thereunder; and to that extent may be invoked by aliens within their provisions. But the rights granted by such international agreements cannot be deemed to become so completely vested in the recipients thereof under the terms of the treaty, as to prohibit their revocation when the needs of the nation require such action, and, as has been seen, this may be done by subsequent treaties or by a subsequent act of Congress. However, moral justification for such

[90]185 U. S. 213, 46 Law Ed. 878.

[91]Citing Foster v. Neilson, 2 Pet. 253, 314, 7 Law Ed. 415, 435; the Cherokee Tobacco, 11 Wall. 616, 20 Law Ed. 227, 229; Head Money Cases, 112 U. S. 580, 599, 28 Law Ed. 798, 804; Whitney v. Robertson, 124 U. S. 190, 194, 31 Law Ed. 386, 388; Taylor v. Morton, 2 Curt. C. C. 454, 459, Fed. Case No. 13799; Clinton Bridge Case, Woolw. 155; Fed. Cases No. 2, 900; Ropes v. Clinch, 8 Blatch, 304; Fed. Case No. 12041; 2 Story Const. Sec. 1838.

action would seem to be found—in the absence of a breach of faith by the other contracting party—only when existing conditions agreed to in the treaty come to constitute a menace or a burden to the state, the full effect of which was not appreciated at the time of entering into the contract. "Unexpected events may call for a change in the policy of the country. Neglect or violation of stipulations on the part of the other contracting party may require corresponding action on our part. When a reciprocal engagement is not carried out by one of the contracting parties the other may also decline to keep the corresponding engagement." [92]

As in the case of statutes the repeal of treaties by implication is not viewed with favor by the courts. Said MR. JUSTICE HARLAN: "In the case of statutes alleged to be inconsistent with each other in whole or in part, the rule is well established that effect must be given to both, if by any reasonable interpretation that can be done; that 'there must be a positive repugnancy between the provisions of the new law and those of the old; and even then the old law is repealed by implication only *pro tanto* to the extent of the repugnancy;' and that 'if harmony is impossible, and only in that event, the former law is repealed in part or wholly as the case may be.....' The same rules have been applied where the claim was that an act of Congress had abrogated some of the provisions of a prior treaty between the United States and China (Chew Heong v. United States, 112 U. S. 550). In that case it was held that the treaty could stand with the subsequent statutes, and that consequently, it was enforced. Like principles must control when the question of whether an act of Congress has been superseded in whole or in part by a subsequent treaty. A statute enacted by Congress expresses the will of the people of the United States in the most solemn form. If not repugnant to the Constitu-

[92]Chae Chan Ping v. United States, 130 U. S. 581, 32 Law Ed. 1068, 1074.

tion it is made by that law a part of the supreme law of the land and should never be held to be displaced by a treaty, subsequently concluded unless it is impossible for both to stand together and be enforced."[93]

D. REGULATION OF IMMIGRATION BY LEGISLATIVE ENACTMENT.

1. *The Immigration Acts.*

(A.) The Alien Act of 1798.[94]

The first act passed by the Congress of the United States authorizing the deportation of undesirable aliens from this country was approved June 25, 1798. "That act," says MR. JUSTICE FIELD,[95] "vested in the President power to order all such aliens as he should adjudge dangerous to the peace and safety of the United States, or should have reasonable grounds to suspect were concerned in any treasonable or secret machinations against the government to depart out of the territory of the United States within such time as should be expressed in his order. And in case any alien when thus ordered to depart should be found at large within the United States after the term limited in the order, not having obtained a license from the President to reside therein, or having obtained such license should not have conformed thereto, he should on conviction thereon be imprisoned for a term not exceeding three years, and should never afterwards be admitted to become a citizen of the United States; with a proviso that if the alien thus ordered to depart should prove to the satisfac-

[93]United States v. Lee Yen Tai, 185 U. S. 213, 46 Law Ed. 878, citing Wood v. United States, 16 Pet. 342, 10 Law Ed. 987; United States v. Tynan, 11 Wall. 88, 20 Law Ed. 153; South Carolina v. Stoll, 17 Wall. 425, 21 Law Ed. 650; Frost v. Wenie, 157 U. S. 46, 39 Law Ed. 614; and see case of the Chinese merchant, 13 Fed. 605; *in re* Ah Lung, 18 Fed. 28.

[94]1 Stat. at L. 577.

[95]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; Dissenting Opinion.

tion of the President,[96] by evidence to be taken before such person or persons as he should direct, that no injury or danger to the United States would arise from suffering him to reside therein, the President might grant a license to him to remain within the United States for such time as he should judge proper and at such place as he should designate. The act also provided that the President might require such alien to enter into a bond to the United States in such penal sum as he might direct, with one or more sureties to the satisfaction of the person authorized by the President to take the same, continued for his good behavior during his residence in the United States, and not to violate his license, which the President might revoke whenever he should think proper. The act also provided that it should be lawful for the President, whenever he deemed it necessary for the public safety, to order to be removed out of the territory of the United States any alien in prison in pursuance of the act, and to cause to be arrested and sent out of the United States such aliens as may have been ordered to depart, and had not obtained a license, in all cases where, in the opinion of the President, the public safety required a speedy removal."

The voluntary return of an alien thus removed or sent

[96]Section 12 of the Act of May 5, 1882, provided that any Chinese person found unlawfully in the United States should be removed therefrom to the country whence he came, by direction of the President after being found not lawfully entitled to remain after a hearing by a justice, judge or commissioner. After being so found he was to be detained a reasonable time so that the President might have an opportunity to perform the duty imposed on him by the act. The order of the President might be general or special, retrospective or prospective. But the authority of the President was limited to ordering the removal; he had no power to revise the judgment of deportation. It was held that he might by a general order directed to the marshal or perhaps the collector direct that all persons thus found to be unlawfully here shall be removed, and instruct the officer to take the necessary steps incident to such removal. *In re* Chow Goo Pooi, 25 Fed. 77. The amending Act of July 5, 1884, merely provides that any Chinese person found unlawfully within the United States shall be caused to be removed therefrom at the cost of the United States after being adjudged to be unlawfully in the country.

out of the country was penalized by imprisonment of such duration as the President might deem required by the interests of the public safety, provided such return had been without permission granted by the President. Section 5 of the act provided that every alien thus removed might take with him such part of his goods and chattels and other property as he might find convenient, and that all property left by him in the United States should remain subject to his order and disposal. This provision is of peculiar interest because it is the only one of its kind in the long list of exclusion and immigration acts the first of which was to be enacted by Congress eighty-four years later.

Jefferson, Madison and other jurists and statesmen of recognized ability denounced the act, not only as being unconstitutional, but as opposed to recognized precepts of international law adopted and cherished by civilized nations. It was characterized as a war measure by John Adams, at that time President of the United States, who opposed the bill and against whom the responsibility for its passage was charged;[97] and the general assembly of Virginia "declared that it exercised a power nowhere delegated to the Federal Government." [98] "The duration of the act," continues MR. JUSTICE FIELD, "was limited to two years, and it has ever since been the subject of universal condemnation." [99] He cites Elliott's Debates, to the effect that the distinction between alien enemies and alien friends is a clear and conclusive answer to the contention, that by the law of nations, aliens may be removed at discretion for offences against that law, that Congress is authorized to define and punish such offences, and that to be dangerous to the peace of society is, in aliens, one of those offenses; and that alien friends, except in the

[97]Vol. 9 of his works, p. 291; Fong Yue Ting v. United States, 149 U. S. 698, 747, 37 Law Ed. 905.

[98]Fong Yue Ting, *Ibid*, p. 748; Elliott's Debates, 528.

[99]Fong Yue Ting, *Ibid*, p. 750.

single case of public ministers, are under the municipal law, and must be tried and punished according to that law only.

However meritorious or well chosen these arguments may have been in their application to the Alien Act of 1798, they have not stood the test of judicial analysis brought to bear in the consideration of the validity and effect of the Chinese exclusion and immigration acts. The validity of the distinction between alien friends and alien enemies, with regard to whether or not they are subject to expulsion or exclusion by the state in which they have acquired a domicile was denied in the very case under discussion.[100] The court, speaking through MR. JUSTICE GRAY, asserted the inherent and inalienable right of every sovereign and independent nation to exclude or expel all aliens, or any class of aliens, absolutely, or upon certain conditions, in war or in peace, and described this right as one essential to the safety, independence, and welfare of the country exercising it. To the suggestion that nowhere were such powers delegated to Congress by the states it may be replied that the states, by the very act of uniting and thus creating a national community and adding a new member to the family of nations, brought into being a political entity the attributes of which were henceforth to be determined, in an international sense at least, in accordance with the principles of the law of nations. For the rest, the question of whether the Alien Act was constitutional or the reverse is of little profit in connection with the present subject. "It is enough to say," remarks the Court in the Chinese Exclusion Case,[1] that it is entirely different from the act before us (the Exclusion Act of 1882), and the validity of its provisions was never brought to the test of judicial decision in the courts of the United States." And in a much later case it was said: "Reference was made by counsel to the Alien Law of June 25,

[100]Fong Yue Ting, *Ibid*, p. 711.

[1]Chae Chan Ping v. United States, 130 U. S. 610, 32 Law Ed. 1077.

1789, but we do not think that the controversy over that law (and the sedition law) and the opinions expressed at the time against its authority have any bearing upon this case, which involves an act[2] couched in entirely different terms, and embracing an entirely different purpose." [3]

(B.) The Coolie Trade Acts of 1862 and 1869.[4]

On February 19, 1862, Congress passed an act, entitled "An act to prohibit the coolie trade by American citizens in American vessels." This act prohibited the procuring from any port or place in the United States, or from any other port or place, the inhabitants or subjects of China known as "coolies" to be transported to any foreign port, or to be disposed of, or sold, or transferred for any term of years, or to be held to service or labor. But it was provided that nothing in the act was to be taken to apply to any free and voluntary emigration on the part of Chinese persons, and a consular certificate was required as evidence to show that the emigration was the voluntary act of the individual who had left China. The Act of February 9, 1869, extended the prior act so as to include and embrace the inhabitants and subjects of Japan, or of any other Oriental country, known as coolies, in the same manner and to the same extent as such act and its provisions applied to the inhabitants and subjects of China.

(C.) Act of May 31, 1870.[5]

Section 16 of this act, entitled "An act to enforce the right of citizens of the United States to vote in the states of this Union, and for other purposes," provided that "No tax or charge shall be imposed or enforced by any state upon any person immigrating thereto from a foreign coun-

[2]Immigration Act of March 3, 1903.
[3]Turner v. Williams, 194 U. S. 279, 49 Law Ed. 979.
[4]12 Stat. at L. 340; 15 Stat. at L. 269.
[5]16 Stat. at L. 144.

try which is not equally imposed and enforced upon every person immigrating to such state from any other foreign country, and any law of any state in conflict with this provision is hereby declared null and void."

Thus the general purpose of this act and of those regulating the coolie trade was, as their provisions clearly show, to encourage, rather than to discourage, the immigration of aliens to this country.

(D.) State Laws Concerning Immigration.

Section 9 of Article I of the Constitution of the United States provides that "The migration or importation of such persons as any of the states now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importations, not exceeding ten dollars for each person." While the effect of this section is to show that the migration or importation of persons into this country was one the control of which, after the date set, lay with Congress, and it is equally apparent that, at least during that period, the admissibility of the persons immigrating or imported to the United States was primarily one to be determined by the states to the ports of which they were brought. There is considerable significance in the fact that the section does not employ the word "aliens" or "foreigners" in referring to the subjects of the section, and there is little reason to believe that "aliens" as the term is used to-day in the exclusion and immigration acts were intended to be included in its provisions. "There has never been any doubt," says the Supreme Court, "that this clause had exclusive reference to persons of the African race. The words 'migration' and 'important' refer to the different conditions of this race as regards freedom and slavery. When the free black man came, he migrated; when the

slave came he was imported."[6] This statement was made in answer to the contention that the right of the states to pass inspection laws included the right to impose a tax on immigrants seeking admission to the various states, on the ground that they were subjects of import under the Constitution, and consequently subject to the operation of the state inspection laws. At an early period a number of the states, among them New York, Massachusetts, Pennsylvania, California and Louisiana, passed acts which, under the guise of inspection laws, or as frank and undisguised prohibitive legislation forbade, interfered with, or regulated the admission of aliens into their respective territories. The validity of these acts was generally denied either by the state courts themselves or by the Federal courts which had occasion to pass on the question.[7]

(1.) New York.

An act passed by the New York legislature on February 11, 1824, provided that the master of every vessel arriving in New York from any foreign port, or from any state of the United States other than New York, should within twenty-four hours after arrival, make a report in writing, containing the names, ages and last legal settlement of every person on board the vessel commanded by him during the voyage; and that if any of the passengers should have gone on board any other vessel or should during the voyage have been landed with a view to proceed to New York the report should contain a statement to that effect. It was argued that this provision was a regulation of commerce, and violative of the commerce clause of the Constitution. But it was held by a divided court that it was

[6]People v. Compagnie Gen. Trans., 17 Otto (107 U. S.) 59, 27 Law Ed. 383.

[7]N. Y. v. Comms. of Emigration, 59 Hun. 624, 13 N. Y. Sup. 751; Am. S. S. Co. v. Bd. of Health, 26 Int. Rev. Rec. 69; *In re* Ah Fong, Fed. Case No. 102; 3 Sawy. 144, 16 Fed. 344, 8 Sawy. 640; Lin Sing v. Washburn, 20 Cal. 534; *Ex parte* Lippman, 35 Pac. 557; The Cynosure, Fed. Case No. 3529; the Wm. Janis, Fed. Case No. 17697.

not a regulation of commerce, but of a police matter, that persons were not the subject of commerce, and that it constituted merely municipal legislation, which it was not only the right but the duty of the state to enforce.[8] In view of the decisions in later cases involving the subject of the exclusive power of Congress over all questions connected with the admission of aliens, this case cannot now be regarded as authoritative. The statement that persons are not the subject of commerce certainly does not represent the judicial view current at the present time; for the power of Congress to regulate commerce with foreign nations was said by the late CHIEF JUSTICE FULLER in the case of Turner v. Williams,[9] to "include the entrance of ships, the importation of goods *and the bringing of persons* into the United States." And it may be stated in this connection that both CHIEF JUSTICE MARSHALL and MR. STORY were of the opinion that the provision of the New York act in question was no more or less than a regulation of commerce by a state and was prohibited by the Federal Constitution.[10] In that case this same New York statute and a Louisiana act, containing analogous provisions required that the master or owner of the vessel bringing aliens to the state should give a bond for every passenger landed in the penal sum of three hundred dollars conditioned to indemnify the Commissioner of Immigration and every county, city and town in the state against any expense for the relief or support of the person named in the bond for four years thereafter. The court held that to require the payment of a tax on behalf of a passenger is a tax on the passengers if collected from them, or a tax on the vessel or the owners thereof for the exercise of the right of landing in the city. The statute was held void insofar as it imposed the tax and it was held that "Nothing was gained in the argument by calling it

[8]N. Y. v. Milne, 36 U. S. 102, 11 Pet. 102, 9 Law Ed. 648.

[9]194 U. S. 279, 48 Law Ed. 979.

[10]Henderson v. The Mayor, 2 Otto, 92 U. S. 259, 23 Law Ed. 543.

the police power" as "whenever the statute of a state invades the domain of legislation which belongs exclusively to the United States, it is void, no matter under what class of powers it may fall or how closely allied to powers conceded to belong to the states."

(2.) Massachusetts.

By its Act of April 20, 1837, the Massachusetts legislature provided that no alien passengers should be landed until the sum of two dollars should have been paid to the boarding officer for each one so landing, and aliens likely to become paupers were prohibited from landing altogether unless bond were given to secure the city, or the state, against expenditures for their support. This act, like the New York statute in the case of Henderson v. The Mayor, *supra,* was held by the Supreme Court of the United States to be unconstitutional and void.[11]

(3.) California.

Later the constitutionality of a California statute was attacked on the same ground. This statute did not require a bond for every alien passenger or commutation in money, as did the statutes of New York and Massachusetts; but only for certain enumerated classes amongst which were "lewd and debauched women;" but it required an examination of passengers coming to a port in the state from any foreign port or place, and provided for a charge of seventy-five cents for every examination. The effect was, says the court in Chy Lung v. Freeman,[12] to make it possible for the Commissioner of Immigration arbitrarily to designate certain persons as belonging to the objectionable classes, to require the master of the vessel to fill up and sign a bond for five hundred dollars for each

[11]Smith v. Turner, Norris v. Boston, 7 Howard, 48 U. S. 283, 12 Law Ed. 702.

[12]92 U. S. 275, 23 Law Ed. 550.

member so designated, and to furnish two sureties from the residents of the state in each case; to pay besides five dollars in each and every case for the preparation of the bond and for swearing the sureties; and an extra charge of seventy-five cents for the examination of each member of the class thus designated by the Commissioner and for all others on board the vessel. The court held that the manifest purpose of the act was "not to obtain indemnity, but money..... It is idle to pursue the criticism. In any view which we can take of this statute it is in conflict with the Constitution of the United States and therefore void."

In spite of these decisions the New York legislature passed, on May 31, 1881, an act providing for the imposition of a tax of one dollar for each and every passenger who should come by vessel from a foreign port to the port of New York. It was claimed that this was an inspection law but the Supreme Court did not agree with this view. "A state cannot," said the court, "make a law designed to raise money to support paupers, to detect or prevent crime, to guard against disease, and to care for the sick an inspection law within the constitutional meaning of that word by calling it so in the title." This case was decided October 9, 1882, after the passage of the immigration act of August 3 of that year, and the court pointed out, aside from the innate want of power in states constitutionally to pass such a statute, the additional fact that the Act of Congress of 1882 "covers the same ground as the New York statute, and they cannot co-exist." [13]

It has been held, however, that the detention and the disinfection of immigrants by order of a state board of health, with the purpose of preventing the spread of infectious

[13]People v. Compagnie Generale Transatlantique, 17 Otto, 107 U. S. 59, 27 Law Ed. 383.

diseases, is not a regulation of foreign commerce by a state within the meaning of the constitutional prohibition.[14]

(E.) The Act of March 3, 1875.[15]

This act is entitled "An act supplementary to the acts in relation to immigration," and refers in its first section to title XXIX of the Revised Code, entitled "Immigration." Attention has been called to the fact[16] that the purport of the acts of Congress passed up to this time was to encourage the voluntary immigration of aliens to this country, including members of the Mongolian races. True, the Act of February 19, 1862, provided for the issuance of certificates to aliens immigrating from China to this country, and by the Act of February 9, 1869, this provision was made applicable to the subjects of Japan and any other oriental countries; but the object of this provision seems to have been the protection of the voluntary immigrant, and hence, perhaps an inducement to take advantage of the right to immigrate so plainly alleged in the statute; and the certificates issued thereunder served a very different purpose from the certificate of identity, possession of which was, seven years later, first made obligatory on Chinese persons seeking admission into the United States under the Chinese exclusion acts. But the Act of 1875 provided that the certificates therein prescribed should not be issued to aliens who had entered into agreements for a term of service within the United States for lewd and immoral purposes. The importation of foreign women into the United States for the purposes of prostitution is by such act prohibited and made a felony. And, whereas engaging in the Coolie trade, irrespective of the ports to which the laborers were taken by those participating in the venture, was prohibited to citizens of the

[14] Minneapolis, St. Paul & S. Ste. Marie Railway Company v. Milner, 57 Fed. 276.

[15] 18 Stat. at L. 477.

[16] *Ante*, p. 56.

United States and foreigners residing therein by the earlier act, the Act of 1875 prohibits the making of a contract by any person "to supply to another the labor of any coolie or other person brought into the United States."

Section 5 made it unlawful for alien persons "undergoing a sentence for conviction in their own country of felonious crimes other than political, or growing out of the result of such political offenses, or whose sentence has been remitted on condition of their emigration," and women "imported for the purpose of prostitution" to "immigrate into the United States." An alien found by the collector of the port at which the vessel carrying him arrived to be a member of the classes whose entry was prohibited by the act was forbidden to leave the vessel without the collector's permission, nor was he allowed to land except in obedience to a judicial process issued pursuant to law. And it is interesting, in the light of the provisions of subsequent immigration acts and of interpretations thereof by the courts, to note that the Act of 1875 provides that should any alien dissatisfied with the excluding decision of the collector, "apply for release or other remedy to any proper court or judge" for the purpose of testing the correctness of the inspector's decision, it should be the duty of the collector at the port to detain the vessel until a *judicial* hearing and determination of the matter was had.

(F.) The Act of August 3, 1882.[17]

This act provided in its first section that "there shall be levied, collected and paid a duty of fifty cents for each and every passenger not a citizen of the United States who shall come by steam or sail vessel from a foreign port to any port of the United States," Congress thereby exercising for the first time in the history of our immigration legislation the power which, as prior decisions herein cited show, the states attempted in vain to exert. The Secre-

[17] 22 Stat. at L. 214.

tary of the Treasury was charged with the duty of executing the provisions of the act and was given authority under it to enter into contracts with such state commission, board or officer as might be designated by the governor of any state for that purpose to take charge of the local affairs of immigration in the ports of said states. The state commission, board, or officer so designated, was to examine into the condition of passengers arriving at the ports of the states by water, and was authorized to go on board of and through any vessel or ship for that purpose. If on examination the proper officers found among the passengers a convict, lunatic, idiot, or person unable to take care of himself or herself without becoming a public charge they were to report this fact to the collector of the port, and, under the law, such person could not land; hereby a co-operation between the state and Federal authorities which, however, was soon to disappear with the provisions of subsequent acts. The powers exercised by the state and Federal authorities could not be mutually delegated[18] and the board was confined in rendering its excluding decisions to classes enumerated as being subject to exclusion under the Federal statute; and having rendered its decision touching the status of an alien seeking admission the decision was not subject to reversal by the collector of customs,[19] notwithstanding that under the law the commissioners were to report their findings to him.[20]

The act provided for the return of all foreign convicts except those convicted of political offenses, and added to the list of persons excludable under the Act of 1875, lunatics, idiots and persons unable to take care of themselves without becoming public charges.

[18]In re Murnane et al., 39 Fed. 99.

[19]In re Palagano, 38 Fed. 580.

[20]*In re* Day, 27 Fed. 678; and see *In re* Bucciarello et al., 45 Feb. 463, holding that the determination of the alien's admissibility lay, under the Act of February 23, 1887, with the superintendent of immigration at the port of New York and not with the collector of customs.

The constitutionality of the act was made the subject of an attack based on two main grounds; first, that the tax or duty of fifty cents was not levied to provide for the common defense or welfare of the United States and was not uniform throughout the United States; and, second, that the act violated the provisions of numerous treaties entered into between the United States and various friendly nations.[21] The first objection was disposed of by the Supreme Court with the statement that "the tax in this case, which, as far as it can be called a tax, is an excise duty on the business of bringing passengers from foreign countries into this by ocean navigation, is uniform and operates precisely alike in every port of the United States where such passengers can be landed;" and held furthermore that the power exercised in this instance was not the taxing power but "a mere incident of the regulation of commerce." As to the second, it was held that "so far as the provisions of the act may be found to be in conflict with any treaty with a foreign nation they must prevail in all the judicial courts of this country." The superiority of existing treaties over subsequent acts of Congress was thus denied.[22]

(G.) The Act of February 26, 1885,[23] as Amended by the Act of February 23, 1887.[24]

This statute was entitled "An act to prohibit the importation and immigration of foreigners and aliens under contract or agreement to perform labor in the United States, its territories, and the District of Columbia."

Before adopting its present prohibitive policy toward the importation of alien laborers, under contract, the Federal government for a brief period pursued an exactly opposite course. In his message to Congress, December 8, 1864, President Lincoln strongly recommended that a sys-

[21] Head Money Cases, 112 U. S. 580, 28 Law Ed. 798.
[22] See *ante* p. 45.
[23] 23 Stat. at L. 332.
[24] 24 Stat. at L. 414.

tem for the encouragement of immigration be established. He stated that there was a great deficiency of laborers in every field of industry and that "tens of thousands of persons destitute of remunerative occupations, are thronging our foreign consulates and offering to emigrate to the United States if essential, but very cheap, assistance can be afforded." The President's recommendation was considered by a select committee of the House of Representatives, which brought in a favorable bill and recommended its passage on the ground that the vast number of laboring men who had left their peaceful pursuits for the pursuits of war had created a shortage in the labor supply which was being seriously felt in every section of the United States. The committee concluded that this demand for labor could be supplied only by immigration.

To remedy the situation, Congress enacted the law of July 4, 1864.[25] This law provided that contracts made in foreign countries whereby emigrants to the United States pledged their wages for a term not exceeding one year to repay the expense of emigration should be valid, and should not in any way be considered as creating a condition of slavery or servitude. The law created the office of Commissioner of Immigration, to be under the Secretary of State, and provided for an office in New York City charged with arranging for the transportation of immigrants to their destination in the United States and protecting them from imposition and fraud.

In 1866, the House of Representatives passed a bill to extend the scope of the law of 1864 by creating at various Atlantic ports immigration officers similar to that in operation at New York. The Senate, however, did not agree to this proposed amendment, and in the discussion concerning it the law itself was declared impolitic, if not unconstitutional, and at one time it was in danger of repeal.

[25] 13 Stat. at L. 385.

The law of 1864 was repealed in 1868, and, although several times proposed in bills introduced in Congress, the Federal Government never again attempted the artificial promotion of immigration. In fact the operation of the law of 1864 and the agitation growing therefrom undoubtedly were among the factors that eventually led to the passage of the alien contract labor law of 1885.

It was the first to have for its main object the exclusion of foreign laborers from the United States and that this was its chief purpose, and that its provisions, broad though they were, did not apply to foreigners coming to the United States under contract who were not of the laboring classes, was held by the Supreme Court in the case of Church of the Holy Trinity v. United States.[26] Commenting on the title of the act, the court says: "Obviously the thought expressed in this reaches only to the work of the manual laborer as distinguished from that of the professional man..... We find, therefore, that the title of the act, the evil which was intended to be remedied, the circumstances surrounding the appeal to Congress and the reports of the committee of the House all concur in affirming that the intent of Congress was simply to stay the influx of this cheap unskilled labor;" and held that it could not be deemed to apply to ministers of the gospel.

The act prohibited all persons, including companies, partnerships, and corporations, from in any way assisting or encouraging the importation or migration of aliens into the United States under contract or agreement made previous to their importation or migration to perform labor or service of any kind in this country,[27] and provided that any such contract thereafter made should be null and void.[28] Violations of section 1 were made punishable with a fine of one thousand dollars for each offense,[29] and the

[26]143 U. S. 457, 36 Law Ed. 266.
[27]Section 1.
[28]Section 2.
[29]Section 3.

master of any vessel knowingly bringing such a contract laborer into the United States was on conviction thereof to be held guilty of a misdemeanor and subject to fine or imprisonment.[30] Section 5 provides that the following aliens shall not be deemed to be contract laborers: skilled foreign workmen engaged to perform labor in the United States in or upon any new industry not at that time established in the United States, provided that skilled labor could not be otherwise obtained for that purpose, professional actors, artists, lecturers, or singers, and persons employed strictly as personal or domestic servants.

The act was amended by the Act of February 23, 1887,[31] and by the Deficiency Appropriation Act of October 19, 1888,[32] the first of which provided for the return of all persons included in the prohibitions of the Act of 1885, and the second of which provided further that such aliens might be returned within one year after landing.[33]

The effect of these three acts, as their titles show, "was primarily to prevent the importation and immigration of foreign labor, and it is against this class that their provisions were plainly directed.[34] They applied generally to the manual laborer, as distinguished from the professional man, such as experts in chemistry,[35] and ministers of the gospel.[36] An under coachman was held to be included in the exempt class designated as personal and domestic servants;[37] but a person entering under a contract to labor as a farm servant was held not to come within the exception.[38] The purpose of this act being to put a

[30]Section 4.

[31]24 Stat. at L. 414.

[32]25 Stat. at L. 565.

[33]In re Lifieri, 52 Fed. 293.

[34]In re Cummings, 32 Fed. 75.

[35]United States v. Laws, 163 U. S. 256, 41 Law. Ed. 151.

[36]Church of the Holy Trinity v. United States, 143 U. S. 457, 36 Law Ed. 226.

[37]In re Martorelli, 63 Fed. 437.

[38]In re Cummings, 32 Fed. 75.

stop to the entry of cheap and unskilled foreign labor, it was held not to apply to expert drapers and window dressers;[39] but this decision was criticised in an opinion of the Attorney General[40] which held that alien lacemakers should be refused a landing in the United States when coming here for the purpose of employment under contract. As to the application of the appropriate sections of the act to persons entering the United States under contract to engage in a new industry, it was held that the manufacture of lace curtains, not begun before the tariff law of 1890, and not firmly established at the time the parties entered under contract is a new industry,[41] as is the manufacture of French silk stockings, differing in appearance, quality and manufacture from anything theretofore made.[42]

The Act of 1885 was held constitutional under the right of Congress to regulate commerce with foreign nations;[43] and it necessarily follows that, granting the power to discriminate as to which classes of aliens shall be admitted and which excluded, Congress has the power to punish persons who assist in the introduction of members of the excluded classes.[44] Said the Supreme Court, in the case of Lees v. United States:[45] "Given in Congress the absolute power to exclude aliens, it may exclude some and admit others, and the reasons for its discrimination are not open to challenge in the courts. Given the power to exclude, it has a right to make the exclusion effective by punishing those who assist in introducing or attempting to introduce aliens in violation of its prohibition. The importation of alien laborers who are under previous contracts to perform labor in the United States is an act de-

[39]United States v. Gay, 95 Fed. 226.
[40]23 Op. Atty. Gen. 381, Jan. 28, 1901.
[41]United States v. Bromiley, 58 Fed. 554.
[42]United States v. McCallum, 44 Fed. 745.
[43]United States v. Craig, 28 Fed. 795.
[44]Ex parte Gouyet, 175 Fed. 230.
[45]150 United States 476, 37 Law Ed. 1150.

nounced, and the penalty is visited, not upon the alien laborer—although by the amendment of February 23, 1887, he is to be returned to the country from whence he came—but upon the party assisting in the importation. If Congress has power to exclude such laborers, as by the cases cited it unquestionably has, it has the power to punish any one who assists in their introduction."

To give a right of action for importing aliens contrary to the provisions of the act it was necessary that the immigrant, previous to becoming a resident of the United States, must have entered into a contract to perform labor or service in this country; that he must actually have migrated to or entered the United States in pursuance of such contract, and that the defendant must have prepaid his transportation, or otherwise assisted, encouraged or solicited his immigration, knowing that he had entered into the illegal contract;[46] and any district in which the defendant might be found might be made the *situs* of the civil action brought again him for such violation. It was held that actions for the recovery of penalties incurred under the act were to be brought in the District court, although the act provided that the penalties were to be recovered as "debts of like amount are now recovered in the Circuit Courts of the United States."[47] "When," says the Supreme Court,[48] "it is remembered that a penalty may be recovered by indictment or information in a criminal action, or by a civil action in the form of an action of debt, and also that the Circuit Courts of the United States are, as contradistinguished from the District Courts, the Federal Courts of original jurisdiction, the significance of this clause is clear. It in effect provides that although the recovery of a penalty is a proceeding criminal in its

[46]United States v. Craig, 28 Fed. 795.

[47]Rosenberg v. Union Iron Works, 109 Fed. 844; and might be properly begun by capias in accordance with the state law. United States v. Banister, 70 Fed. 44.

[48]Lees v. United States, 150 U. S. 476, 37 Law Ed. 1150.

nature, yet in this class of cases it may be enforced in the same manner that debts are recovered in the ordinary civil courts."

(H.) The Act of March 3, 1891.[49]

This act was entitled "An act in amendment to the various acts relative to immigration and the importation of aliens under contract or agreement to perform labor," and was not, as its title shows, limited in its operation to the exclusion of foreign contract labor, as was the Act of 1885, but constituted legislation having for its object the exclusion not only of a particular class of foreigners, but of all classes whose presence in this country was thought by Congress to be obnoxious or injurious to members of those communities which the objectionable aliens sought to invade, and in which they intended to take up their residence.[50]

This act was generally held to be operative as to immigrants only; that is, to aliens who, forsaking their former domicile, come to the United States for the purpose of making it their home; and not to apply to aliens actually domiciled in the United States, and who, after a trip beyond the territorial limits thereof return to resume a domicile already acquired.[51]

Classes Excluded.

In addition to those classes already excluded by former acts this act denied admission to paupers, or persons likely to become a public charge, persons suffering from a loathsome or dangerous contagious disease, persons who had been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude, polygamists, and also any person whose ticket or passage was paid for with

[49] 26 Stat. at L. 1084.

[50] United States v. Sandrey, 48 Fed. 550.

[51] United States v. Burke, 99 Fed. 895; In re Ota, 96 Fed. 487; In re Maiola, 67 Fed. 114; In re Martorelli, 63 Fed. 437; In re Panzara, 51 Fed. 275.

the money of another or who was assisted by others to come, unless it was affirmatively and satisfactorily shown on special inquiry that such person did not belong to one of the foregoing classes or to the class of contract laborers excluded by the Act of 1885. The section enumerating the excluded classes was held to have no application to contract laborers as a class but only to assisted immigrants and to the classes previously named, and that the assisted immigrant was not within the prohibition of the section if it appeared that he did not belong to the "foregoing classes" or to the class of contract laborers.[52]

The provision touching the exclusion of convicts operated in favor of foreigners sentenced abroad for the commission of crimes against foreign jurisdictions, as compared with the provisions of the earlier acts on the subject, whereby the mere fact of previous conviction—provided that it had not been for a political crime—was sufficient to exclude.[53] Here the test of moral turpitude was introduced for the first time, and is still maintained under the existing immigration laws.

Contract Labor Provisions.

In its fifth section this act added to the list of persons designated by the Act of 1885 as those to whom the provisions touching the importation of foreign labor should not apply, ministers of any denomination, persons belonging to any recognized profession, and professors for colleges or seminaries. In the case of United States v. Laws,[54] the Supreme Court, in deciding that a chemist must be held to be exempt from this provision, said, "If by the terms of the original act the provisions thereof applied only to unskilled laborers whose presence simply tended to degrade American labor, the meaning of the act as amended by the Act of 1891 becomes, if possible, still

[52] In re Lifieri, 52 Fed. 293.
[53] In re Aliano, 43 Fed. 517.
[54] 163 U. S. 256, 41 Law. Ed. 151.

plainer. Now, by its very terms it is not intended to apply to any person belonging to any recognized profession. We think a chemist would be included in that class. Although the study of chemistry is the study of a science, yet a chemist who occupies himself in the practical use of his knowledge of chemistry as his services may be demanded may certainly at this time be fairly regarded as in the practice of a profession."

Yet in the face of this decision, and in spite of the expressions of the Supreme Court regarding the proper application of the rules of statutory interpretation to the Act of 1885,[55] the Circuit Court of Appeals of the Second Circuit had no hesitation in holding that an alien shown to be a chartered accountant, seeking admission to the United States for the purpose of rendering services as such at a fixed salary to a corporation domiciled in this country came within the prohibition of the act. This person was, on a ruling to this effect, detained for deportation by the Secretary of the Treasury. He appealed to the courts for the issuance of a writ of *habeas corpus,* which was refused, whereupon he appealed to the Supreme Court of the United States. While the case was on the day calendar his counsel agreed to move for a dismissal of the appeal on receiving an assurance from the Department of Justice that the petitioner would be admitted. The order of admission was made by the Secretary of Commerce and Labor and the appeal dismissed.[56]

The act of coming to the United States in response to promises of employment through advertisements printed

[55]Church of the Holy Trinity v. United States, 143 U. S. 457, 36 Law Ed. 227; as to the interpretation of the immigration laws generally, see Redfern v. Halpert, 186 Fed. 150; United States v. Williams, 175 Fed. 274; United States v. Wood, 168 Fed. 438; United States v. Naskashima. 160 Fed. 842; In re Ellis, 124 Fed. 637; United States v. Mar Ying Yuen, 123 Fed. 159; Tsoi Sim v. United States, 116 Fed. 920; United States v. Burke, 99 Fed. 895.

[56]In re Ellis, 124 Fed. 637, 196 U. S. 643; Moore Int. Law Dig., Vol. 4, p. 108.

and published in a foreign country, was treated in section three as equivalent to coming to this country under a contract to perform labor here; and the effect of the section was to dispense with the necessity of proving that there had been a contract with the alien previous to importation on the part of the persons for whom the labor was to be performed other than the promise of employment. The solicitation of any immigrant to migrate to the United States by steamship or transportation companies was forbidden under the penalty of a fine,[57] and the bringing into or landing in the United States of any alien not lawfully entitled to enter, or aiding in the same by vessel or otherwise was made a misdemeanor and punishable with fine or imprisonment.[58] The power of the Secretary of the Treasury to enter into contracts with state commissions, boards, or officers, was withdrawn by this act,[59] which created the office of Superintendent of Immigration,[60] now the Commissioner General of Immigration who, it has been held, under the Act of June 6, 1900,[61] in connection with the Act of May 5, 1892,[62] acquired jurisdiction over Chinese laborers in the United States without certificates of residence.[63]

Finality of Administrative Decisions.

The decisions made by inspection officers and their assistants touching the right of any alien to land, were, when adverse to such right, made final in the absence of appeal taken to the Superintendent of Immigration, whose action was to be subject to review by the Secretary of the Treasury;[64] but the immigrant was accorded the privilege of a

[57]Section 4.
[58]Section 6.
[59]20 Op. Atty. Gen. 69, 1891.
[60]Section 7.
[61]31 Stat. at L. 611.
[62]27 Stat. at L. 25.
[63]Fong Mey Yuk v. United States, 113 Fed. 898.
[64]Section 8.

special inquiry as to his right to land after his case had been first passed on by the inspection officer.[65] These provisions have been held to apply to proceedings taken before the immigrants were allowed to land, and not to proceedings for the recapture of such as had been passed and landed;[66] but there is little doubt that this view, expressed at a comparatively early date in the history of immigration legislation, does not voice the attitude of the courts to-day.[67]

The Return of Aliens Unlawfully Here.

The return of aliens unlawfully within the United States might be ordered within one year after landing, as well as that of aliens becoming public charges within that period after arrival from causes existing prior to such landing.[68] Provision for return within this period had already been made in the Act of October 19, 1888,[69] and this section has been held to create no new authority to return, but simply to provide additional means of meeting the expenses of arrest and removal.[70] In interpreting the purpose and effect of this act and of the preceding Act of 1888 providing for the return of aliens found within a year after entering to be unlawfully in the country, the Supreme Court has said:[71] "Taking all its enactments together it is clear that Congress did not intend that the mere admission of an alien or his mere entering the country should place him at all times thereafter entirely beyond the control or authority of the executive officers of the Government..... The immigrant must be taken to have entered subject to

[65] In re Feinknopf, 47 Fed. 477; In re Hirsch Berjanski, 47 Fed. 445.

[66] In re Lifieri, 52 Fed. 293.

[67] Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; Ekiu v. United States, 140 U. S. 651, 35 Law Ed. 1146; United States v. Yamasaka, 100 Fed. 404.

[68] Section 1.

[69] 21 Stat. at L. 565.

[70] In re Lifieri, 52 Fed. 293.

[71] Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

the condition that he might be sent out of the country by order of the proper executive officer, if, within a year, he was found to have been wrongfully admitted into or to have illegally entered the United States." Again, in a later case,[72] the Supreme Court in referring to the policy of the original Act of October 19, 1888, speaks of it—and also referring to the present act under discussion—as a policy "which obviously was to give a chance for fuller investigation than is possible at the moment of landing, when any inquiry necessarily must be of a very summary sort;" and, in construing section 21 of the Act of March 3, 1903,[73] which perpetuated this provision, added, "This policy is emphasized and re-enforced by changing the period of probation from one year to three, while in other respects paragraph 21 follows almost literally the words of the earlier act."

Prohibition Against Unlawful Landing of Aliens.

Prior to the passage of this act the obligation of shipmasters not to land or bring aliens belonging to the excluded classes into the country consisted in the positive prohibition against the landing of such persons on pain of fine or imprisonment or both.[74] This prohibition was made by section 6 of the act under discussion to apply not only to shipmasters, but to "all persons," and to prohibit the landing of all aliens not entitled to enter the United States. The penalty was made doubly severe.[75] By section 8 it was provided in addition that officers and agents of vessels bringing aliens to the United States should "adopt due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers;" and that any such person "who shall either knowingly or negligently land or

[72]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.
[73]32 Stat. at L., pt. 1, p. 1213.
[74]Act of February 26, 1885, sec. 4; 23 Stat. at L. 332.
[75]Section 6.

permit to land any alien immigrant at any time or place other than that designated by the inspection officers shall be deemed guilty of a misdemeanor" and be punishable by fine or imprisonment. The statute did not, however, contemplate a responsibility on the part of the master or agent so extreme as to make him an absolute insurer against the landing of aliens without his fault; and to hold him liable under the penal clause of the act it was necessary to show that the escape of aliens was due to the master's wilful lack of precaution or positive negligence.[76] That provisions of this nature being penal in character should be strictly construed was held as axiomatic.[77]

Judicial and Administrative Jurisdiction Not Concurrent.

Section 13 provided that the Circuit and District Court of the United States were thereby invested with full and concurrent jurisdiction of all cases civil and criminal arising under the provisions of the act. It was contended in the case of Ekiu v. The United States,[78] that by this provision the courts, as well as the executive officers to whom jurisdiction over cases involving the exclusion or expulsion of aliens had hitherto been confided had jurisdiction over such cases; but the court held that this section "evidently refers to causes of judicial cognizance already provided for, whether civil actions in the nature of debt for penalties under sections 3 and 4 or indictments for misdemeanors under sections 6, 8 and 10. Its intention was to vest concurrent jurisdiction of such causes in the circuit and district courts; and it is impossible to construe it as giving the courts jurisdiction to determine matters which the act has expressly committed to the final determination of executive officers."

[76]Hackfeld & Co. v. United States, 197 U. S. 442, 49 Law Ed. 826.
[77]United States v. Gay, 80 Fed. 254.
[78]142 U. S. 651, 35 Law Ed. 1146.

(I.) The Act of March 3, 1893.[79]

Immigrant Lists.

This law was enacted to facilitate the enforcement of the immigration and contract labor laws. It provided for the furnishing of lists of alien immigrants by the masters of incoming vessels; for the verification of such lists by the master before the consular representative of the United States at the foreign port of departure, and by a competent surgeon prior to the departure of the vessel, and penalized the failure to deliver such lists to the immigrant inspector at the port of arrival.[80]

Boards of Inquiry and Right of Administrative Appeal.

Section 5 of the act provided that aliens not found by the immigrant inspector to be clearly and beyond a doubt entitled to land should be detained for special inquiry by a board composed of not less than four officials acting as inspectors; and that none should be admitted except on the favorable decision of at least three of the members of the board, but that any decision to admit should be appealable by any dissenting inspector to the Superintendent of Immigration, whose decisions should be subject to review by the Secretary of the Treasury.

Immigration Laws No Abrogation of State Quarantine Systems.

The contention has been made that this act was in conflict with the Act of Congress of 1893 which granted additional powers to the Marine Hospital Service, and in conflict as well with rules and regulations issued by the department for the enforcement of the immigration laws.

[79]27 Stat. at L. 651.

[80]But the failure to include in such list the name of a domiciled alien who has taken passage for the round trip in a capacity other than that of seaman does not subject the master to a fine. 23 Op. Atty. Gen. 278, 1900.

But the Supreme Court said:[81] "The immigration acts to which the proposition relates are those of March 3, 1875, of August 3, 1882, of June 21, 1884, of February 26, 1885, of February 23, 1887, and of March 3, 1891, and the regulations to enforce the same. Without undertaking to analyze the provisions of these acts, it suffices to say that after scrutinizing them we think they do not purport to abrogate the quarantine laws of the several states, and that the safeguards which they create and the regulations which they impose on the introduction of immigrants was ancillary, and subject to such quarantine laws. So far as the Act of 1893 is concerned, it is manifest that it did not contemplate the overthrow of the existing state quarantine systems and the abrogation of the powers on the subject of health and quarantine exercised by the states from the beginning, because the enactment of state laws on these subjects would in particular instances, affect interstate and foreign commerce.....Nor do we find anything in the rules and regulations adopted by the Secretary of the Treasury in execution of the power conferred upon him by the act in question giving support to the contention based upon them."

(J.) The Act of March 3, 1903.[82]

Head Tax.

This statute, entitled "An act to regulate the immigration of aliens into the United States," provided in its first section for the levy of a head tax of $2.00 for each passenger not a citizen of the United States, Dominion of Canada, Republic of Cuba, or the Republic of Mexico, coming by water or land into the United States, said tax to be a lien upon the vessel bringing such aliens to the United States and a debt in favor of the Government against the

[81] Compagnie Francaise de Navigation a Vapeur v. State Board of Health, 186 U. S. 380, 46 Law Ed. 1209.

owner of the vessel, payment thereof to be enforced by any legal or equitable remedy; but the head tax was not to be levied on aliens in transit through this country, nor upon aliens who, having once been admitted thereto after payment of the tax should later go in transit through one part of the United States to another through foreign contiguous territory.

Aliens Excluded.

To the list of persons excluded under earlier acts were added epileptics and persons who have been insane within five years previous to their application or have had two or more attacks of insanity at any time previously; professional beggars; anarchists; prostitutes, for the first time in the history of immigration legislation, and persons who procure or attempt to bring in prostitutes or women for the purpose of prostitution; those who have been within one year from the date of the application for admission to the United States deported as being under offers to perform labor or service of some kind; and any person whose ticket or passage was paid for with the money of another or who was assisted by others to come unless it was affirmatively shown that such person did not belong to one of the foregoing classes.

The power of Congress to exclude anarchists was attacked on constitutional grounds but without avail.[83] It was held not to apply to aliens who entered prior to its passage[84] nor to *bona fide* alien seamen,[85] nor to aliens domiciled in the United States.[86]

Prostitutes, and Their Importation.

Theretofore the only provisions prohibiting the entrance

[83]United States ex rel. Turner v. Williams, 194 U. S. 279, 48 Law. Ed. 979.

[84]In re Lea, 126 Fed. 234.

[85]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

[86]United States v. Nakashima, 160 Fed. 843; Rogers v. United States, 152 Fed. 346; United States v. Aultman, 143 Fed. 922; but see Taylor v. United States, 152 Fed. 1.

of immoral women was contained in the Act of 1875,[87] which excluded only those alien women who had been imported for purposes of prostitution, and did not prohibit the entrance of prostitutes coming to this country of their own accord. The importation of women for that purpose was designated in that act as a felony punishable with heavy fine and imprisonment. The Act of 1903,[88] similarly classified and punished the attempt to import as well as actual importation, and re-enacted the prohibition of the law of 1875 against holding or attempting to hold women for such purposes in pursuance of such illegal importation. In so far as the Act of 1903 placed no limitation of the period after arrival within which a person holding an alien woman for prostitution in pursuance of illegal importation might be criminally prosecuted, section 3 of the Act of February 20, 1907, which limited the period within which a prosecution might be initiated to three years, repealed the corresponding section of the Act of 1903, to that extent;[89] but in so far as it excluded alien prostitutes it was kept in force by the later act.[90]

Contract Labor.

While aliens coming to the United States for the purpose of performing labor here under contract were not excluded by the terms of this act,[91] it was none the less made unlawful for any person to prepay the transportation or to assist in the importation or migration of such alien to perform labor, skilled or unskilled, in the United States, pursuant to offers of employment made previous to the importation,[92] and such offense was penalized as in

[87]18 Stat. at L., pt. 3, p. 477.

[88]32 Stat., pt. 1, p. 1213.

[89]United States ex rel. Chanin v. Williams, 177 Fed. 789.

[90]Ex parte Durand, 160 Fed. 558.

[91]Botis v. Davies, 173 Fed. 996; Davies v. Manolis, 179 Fed. 818; 26 Op. Atty. Gen., p. 199, 1907; but see In re Ellis, 124 Fed. 637.

[92]Section 4.

the preceding act,[93] and transportation companies were forbidden to encourage the migration of aliens irrespective of the purpose of such migration except by ordinary commercial letters, circulars, etc.[94]

Unlawful Landing of Aliens.

Section 6 of the Act of March 3, 1891, had prohibited and penalized bringing or landing or aiding in bringing or landing in the United States any alien not lawfully entitled to enter; whereas section 8 of the Act of 1903, not only penalized the bringing or landing, but the attempt to commit these acts as well, in case such aliens had not been duly admitted by an immigrant inspector, or were not lawfully entitled to enter the United States.

Bringing Diseased Aliens to the United States.

The additional prohibition against bringing aliens afflicted with a loathsome or dangerous contagious disease first appears in the Act of 1903, section 9 of which imposed a fine of one hundred dollars upon any transportation company bringing such aliens to this country if it should appear that the alien so brought was afflicted with the disease in question at the time of foreign embarkation and that the existence thereof might have been detected by a competent medical examination at that time.

Obligation of the Transporter to Prevent Unlawful Landing.

Section 8 of the Act of 1891 had imposed on the officers and agents of vessels bringing immigrants to the United States, the duty of adopting "due precautions to prevent the landing of any alien immigrant at any place or time other than that designated by the inspection officers," and penalized as a misdemeanor knowingly or negligently landing or permitting to land any such alien immigrant except at such time and place. Section 18 of the Act of 1903 pro-

[93]Sections 5 and 6.
[94]Section 7.

vided that such precautions should be adopted with regard to "any alien" and penalized the "landing or permitting to land" of any alien except at the time and place designated. The effect of the change of the term "alien immigrants" as used in the Act of 1891 to "aliens" in the Act of 1903 is elsewhere discussed.[95] The omission in the Act of 1903 of the words "knowingly and negligently," used in the Act of 1891 immediately preceding the words "land or permit to land," was doubtless due to a desire on the part of Congress to impose upon ship owners and other persons the obligation to observe the strictest caution to prevent the escape of aliens under their charge. The section was held not to apply to sailors allowed to land in the ordinary course of shore leave, who were carried to an American port with the *bona fide* intent to take them out again when the ship went on, where there was no ground for supposing that they were making the voyage as a pretext to get into the United States.[96]

Obligation of Transporter to Detain Aliens for Deportation.

Section 10 of the Act of 1891 is virtually re-enacted by section 19 of the Act of 1903, providing that refusal by ship owners to receive excluded aliens back on board and neglect to detain them thereon, or refusal or neglect to return them to the foreign port whence they came, shall constitute a misdemeanor. In the corresponding section of the Act of February 20, 1907, the word "fail" is substituted for "neglect." The reason for the change may be found in the language of the Supreme Court in the case of Hackfelt v. United States,[97] where the court had occasion to construe section 10 of the Act of 1891. It was there held that the language of that section "does not make the ship owner an insurer, at all hazards, of the safe return of the immigrant, but

[95] *Post* p. 434 *et seq.*

[96] Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

[97] 197 U. S. 442, 49 Law Ed. 826.

does require every precaution to detain him and prevent his escape." "We think," says the court, "this statute was intended to secure not the delivery of the immigrant at all hazards, but to require good faith and full diligence to carry him back to the port from whence he came.....It is urged by the Government that in view of the re-enactment of section 10 as section 19 of the Act of 1903 it is to receive a construction in harmony with the judicial interpretation given to the act before the revision. While recognizing the rule that doubtful terms which have acquired through judicial interpretation a well understood legislative meaning are presumed to be used by the legislature in the sense determined by authoritative decisions—The Abbotsford (The Abbotsford v. Johnson), 98 U. S. 440, 25 Law Ed. 168—we do not think the rule applies to this case. So far as we know, there has been but one decision, in the Warren case, 7 C. C. A. 368, 5 U. S. App. 656, 58 Fed. 559, which was doubted in the Spruth case, 71 Fed. 678." The court then cites an opinion of the Attorney General[98] holding that the master was not made liable at all hazards by the terms of section 10, and adds that "in this state of judicial and official opinion we do not think this act can be said to have received such judicial interpretation as should control its legislative meaning."

Probationary Period.

Sections 20 and 21 of the Act of 1903 increased the period within which persons found to be public charges due to causes existing prior to the time of landing might be expelled to two years, and the period of expulsion of aliens found by the Secretary of the Treasury to be unlawful in the United States to three.

Boards of Special Inquiry—Effect of Their Decisions.

This act continues the boards of special inquiry established by the Act of 1893, but reduced the membership

[98]23 Op. Atty. Gen. 271, October, 1900.

thereof to three inspectors; and provided that the decisions of such boards were to be final as to the right of aliens to land in all cases where the applicants were found to be suffering from mental or physical disabilities of a particularly severe or permanent nature;[99] and that in other cases the decisions of the boards were to be final except that an appeal therefrom was allowed to the Secretary of Commerce and Labor through the Commissioner General of Immigration.[100] In passing upon the finality of the board's decision in connection with the right of the Secretary of Commerce and Labor to return aliens found by him to be unlawfully within the United States within three years after they had been admitted by the board, the Supreme Court said, "The board is an instrument of the executive power, not a court. It is made up of.....the immigrant officials in the service, subordinates of the Commissioner of Immigration, whose duties are declared to be administrative by section 23. Decisions of a similar type have long been recognized as decisions of the executive department, and cannot constitute *res judicata* in a technical sense.....There is a plain and sufficient meaning for the words, making their decision final, and that is, that it shall be final where it is most likely to be questioned,—in the courts."

Retroactive Effect of This Act.

Section 28, providing that nothing contained in the act should affect any prosecution or other proceeding begun under any existing act was held not to be limited in its application to prosecutions or proceedings which had begun before the passage of the act, but to apply likewise to those thereafter begun under the old law based on acts committed before its repeal or amendment.[1]

Further provisions of this act are considered in connec-

[99]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.

[100]Section 25.

[1]Lang v. United States, 133 Fed. 201.

tion with the discussion of the existing immigration law, the Act of February 20, 1907, as amended by the Act of March 26, 1910.[2]

2. *The Chinese Exclusion Acts.*

(A.) The Acts of May 6, 1882, and July 5, 1884.

The first of the Chinese exclusion acts, the purpose of which has been held to be to exclude Chinese generally as contrasted with that of the immigration acts to admit them generally,[3] was passed on May 6, 1882. The title was "An act to execute certain treaty stipulations relating to Chinese." The stipulations referred to were those contained in Articles I, II and III of the treaty with China of November 17, 1880.[4] providing for the suspension of the immigration of Chinese laborers into the United States. Consequently the Supreme Court of the United States held that "since the purpose avowed in the act was to faithfully execute the treaty any interpretation of its provisions would be rejected which imputes to Congress an intention to disregard the plighted faith of the Government, and consequently the court ought, if possible, to adopt that construction which recognized and saved rights secured by the treaty."[5]

Coming of Chinese Laborers Suspended.

The act provided that the coming of Chinese laborers to the United States be suspended between the period running from the expiration of ninety days after the passage of the act (Aug. 5, 1882), and the expiration of ten years next succeeding the date of the passage thereof (May 6, 1892). It provided for the issuance of certificates for the purpose of the identification of laborers, these certificates to be

[2] *Post* p. 149.
[3] United States v. Crouch, 185 Fed. 907.
[4] *Ante* p. 26.
[5] Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770.

given by the collector of customs to such as were in this country on November 17, 1880, or who should come here prior to August 5th, 1882.[6] It further provided for the identification by the Chinese government of persons other than laborers.[7]

Its primary object was to put a temporary stop to the immigration of Chinese laborers, and at the same time to provide that such as were in the United States prior to November 17, 1880, might be allowed to leave and return at their pleasure.[8] "The enforcement of the act with respect to laborers who were in the United States on November 17, 1880, was attended with great embarrassment from the suspicious nature in many instances of the testimony offered to establish the residence of the parties, arising from the loose notions entertained by the witnesses of the obligation of an oath. This fact led to the desire for further legislation restricting the evidence receivable, and the amendatory Act of July 5, 1884, was accordingly passed.....To obviate the difficulties attending its enforcement the amendatory act declared that the certificate that the laborer must obtain 'shall be the only evidence permissible to establish his right to re-entry' into the United States." [9]

Certificates of Identification and Return.

As above stated, certificates were required under the Act of 1882, as amended, from two distinct classes of Chinese, those who were laborers, and Chinese other than laborers. They were drawn up and framed to meet the distinct requirements of either class, and are in no way to be confused with one another. The certificate required from the Chinese government consists of no more or less than an averment by that government of the fact that the person to whom it was issued did not belong to the labor-

[6]See Appendix.

[7]See United States v. Chu Chee, 93 Fed. 797.

[8]See In re Ah Sing, 13 Fed. 286.

[9]Chae Chan Ping v. United States, 130 U. S. 531, 32 Law Ed. 1068.

ing class; whereas the return certificate issued by the collector of customs to the outgoing laborer was issued in the first instance to distinguish him as such, and for the purpose of properly identifying him as one who had been in the United States on the 17th day of November, 1880, or who had come into the United States before the expiration of ninety days after the passage of the act.[10]

But since the purpose of the act was only to restrict the coming of Chinese laborers, skilled or unskilled, and was not to interfere with the commercial relations between China and this country,[11] it seems that the provisions making the production of the certificate by persons alleging themselves to be merchants must not be considered as an indication that Congress did not look with favor on the coming of Chinese of the exempt classes. In the case of Lau Ow Bew v. The United States,[12] MR. JUSTICE FULLER quoted with approval the following language used by MR. JUSTICE FIELD in an earlier case:[13] "The certificate mentioned in this section (section 6) is evidently designed to facilitate proof by Chinese other than laborers coming from China and desiring to enter the United States that they are not within the laboring class. It is not required as a means of restricting their coming. To hold that such was its object would be to impute to Congress a purpose to disregard the stipulation of the second article of the new treaty, that they should be 'allowed to go and come of their own free will and accord.'"[14]

As before observed, this measure, which went no further than to require that the certificate of both classes be obtained and presented, was not effective, and to make it so the amendatory Act of 1884, in its sixth section contains

[10]Section 4, Act of 1882. Needless to state no certificate is required by Chinese persons of American birth seeking admission into the United States. Re Look Tin Sing, 21 Fed. 905.

[11]Case of the Chinese Merchant, 13 Fed. 605.

[12]144 U. S. 47, 36 Law Ed. 340.

[13]Re Yow Lam Chow, 13 Fed. 605.

[14]And see to the same effect 62 Fed. 914.

the provision that the certificate "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States."

In spite of this additional provision, however, and the various other amendments involving changes of more or less importance the desired result was not reached. For the Supreme Court held that the act would be inconsistent with the treaty of November 17, 1880, if construed to require a certificate from Chinese laborers who were in the United States on that date and who had departed before May 6, 1882, and remained away until after July 5, 1884.[15] The same result was reached in the case of the United States v. Jung Ah Lung,[16] where the facts were analogous. There the Supreme Court, in addition to saying that the provisions of the Act of 1884, as far as they related to the contents of the certificate to be presented to the Collector of Customs by the returning Chinese laborer arriving by vessel, are not retrospective, points out that section 4 of the Act of 1882 did not provide that the certificate was the only evidence permissible to establish the right of return;[17] consequently that other evidence of a laborer's right to return was admissible, thereby sustaining an earlier decision,[18] particularly when as, in the Jung Ah Lung case, there was absolute proof to show that the certificate had been issued under the Act of 1882 to the returning laborer and had been lost in good faith.[19]

The effect of these decisions was "that the return certificate for Chinese laborers was the only evidence permissible on the part of the person producing it, but for those who could not produce such evidence by reason of departure from the country before the Act of 1882 went into effect"

[15]Chew Heong v. United States, *supra.*

[16]124 U. S. 629, 31 Law Ed. 591.

[17]See also 18 Fed. 506.

[18]In re Ho King, 14 Fed. 724.

[19]Note *In re* Tung Yeong, 19 Fed. 184; *In re* Leong Yick Dew, 19 Fed. 490; *In re* Chin Ah On, 18 Fed. 506; and note Fed. Stat. Annot., Vol. 1, p. 774.

(or who could not produce the certificate having left before the Act of 1884 went into effect) "other testimony was admissible.....The failure of the Act of 1884 to cure the defects of the Act of 1882 resulted in both the legislative and executive departments taking up the subject with the view of providing an effective measure of exclusion against the continual influx of Chinese immigrants. The new treaty was negotiated by the State Department and Congress immediately passed the Act of September 13, 1888, to carry the treaty into effect. The treaty was, however, finally rejected by the Chinese Government, and as a consequence that portion of the Act dependent upon the ratification of the treaty failed to become a law.[20]

(B.) The Act of September 13, 1888.

This act provided that from and after the date of the exchange of ratifications of the pending treaty between the United States of America and the Emperor of China, signed on March 12th, 1888, it should be unlawful for any Chinese person, whether a subject of China, or any other power, to enter the United States except as provided in the act.[21] The act was to apply to "all persons of the Chinese race, whether subjects of China or other foreign power excepting Chinese diplomatic or consular officers and their attendants; and the words "Chinese laborers" whenever used in this act, were to be construed as both skilled and unskilled laborers, and Chinese employed in mining.[22] The Chinese laborer was not to be permitted to return to the United States unless he had a lawful wife, child or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement.[23] It was further provided

[20]United States v. Chu Chee, 93 Fed. 797.
[21]Section 1.
[22]Section 3.
[23]Sections 5 and 6.

that a Chinese laborer, desirous of leaving the United States with the intention of returning should be granted a certificate of return by the collector at the port of departure, as furnishing satisfactory proof of his identity, with the right to return limited to one year extendible on proof of existence of causes beyond the control of the person claiming the right which prevented his return within the time specified; and that no Chinese laborer would be permitted to re-enter the United States without presenting the return certificate, and that such return could be lawfully effected only at the port of departure. The provision involving the right of Chinese laborers to return was embodied in substance in Article II of the treaty with China of December 8, 1894. It has been held that in order to retain the right to return under the certificate, where that right depended on the possession by the applicant of property or credit to the amount of a thousand dollars proof must be made of the existence of such property or credit in the United States at the time of the laborer's return.[24]

Chinese persons other than laborers were prohibited from entering the United States except at designated ports excepting Chinese diplomatic or consular officers or their attendants.[25]

Landing of Chinese Persons Prohibited.

The landing or permitting to land of Chinese persons in contravention of the provisions of the act, as well as the attempt to do so, was made a misdemeanor and penalized with a fine or imprisonment in connection therewith in the discretion of the court;[26] but this provision was made inapplicable to the case of shipmasters whose vessels should come within the jurisdiction of the United States in distress or under stress of weather, or touching at any

[24] *In re* Ong Lung, 125 Fed. 814.
[25] Section 7.
[26] Section 9.

port of the United States on a voyage to any foreign port or place, and even then no Chinese persons should be permitted to land except in case of necessity, and should depart with the vessel.[27]

The Falsification of Certificates.

The false substitution or alteration of any name on any certificate required by the act was made a misdemeanor punishable by fine and imprisonment.[28]

Removal of Chinese Unlawfully Here.

Section 13 provided that "any Chinese persons or persons of Chinese descent found unlawfully in the United States or its territory may be arrested upon a warrant issued upon a complaint under oath filed by any party on behalf of the United States or any justice, judge or commissioner of any United States court, returnable before any justice, judge or commissioner of any United States court, and, when convicted upon a hearing and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came....."

Section 15 repealed the Acts of 1882 and 1884, such repeal to take effect upon the ratification of the pending treaty, as provided in section 1 of the act.

(C.) Act of October 1, 1888.[29]

Upon the rejection of the proposed treaty by the Chinese government "Congress very promptly passed an act to supplement the Act of 1882. It was approved October 1, 1888 (25 Stat. 504, c. 1064), and provided that it should be unlawful for any Chinese laborer who had at any time before been or who was then or might thereafter be a resident of

[27]Section 10.
[28]Section 11.
[29]25 Stat. at L. 504.

the United States and who had departed or should thereafter depart therefrom, and had not returned before the passage of the act, to return to or remain in the United States, and that no certificate of identity provided for in the fourth or fifth sections of the Act of 1882 should thereafter be issued, that every certificate theretofore issued in pursuance of said sections was declared void and of no effect, and that Chinese claiming admission by virtue thereof should not be permitted to enter the United States. This act closed the door effectually against Chinese laborers coming into the United States upon any claim of prior residence, whether supported by return certificates or proof of residence in the United States between November 17th, 1880, and August 5th, 1882." [30]

The Act Held Constitutional.

The constitutionality of the Act of October 1, 1888, was attacked vigorously, but to no avail. "The validity of this act," says the Supreme Court in the case of Chae Chan Ping[31]..... "is assailed as being in effect an expulsion from the country of Chinese laborers in violation of existing treaties between the United States and the Government of China, and of the rights vested in them under the laws of Congress..... It must be conceded that the Act of 1888 is in contravention of express stipulations of the treaty of 1868 and of the supplemental treaty of 1880, but it is not on that account invalid or to be restricted in its enforcement. The treaties were of no greater legal obligation than the acts of Congress."..... And the Supreme Court again held in a later case[32] that "the result of the legislation respecting the Chinese would seem to be this: That no laborers of that race shall hereafter be permitted to enter the United States, or even to return after having

[30] United States v. Chu Chee, 93 Fed. 797.

[31] 130 U. S. 581, 32 Law Ed. 1068.

[31] Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503. The "legislation" referred to in the quotation includes the Act of October 1, 1888.

departed from the country, though they may have previously resided therein, and have left with a view of returning....."

The effect of these decisions was to determine that the privilege of Chinese laborers to come to and remain in the United States was a subject within legislative control, to be regularly suspended, or entirely abrogated, as Congress should declare, and that the law of the Chew Heong case[33] was no longer authority in construing the exclusion acts.[34]

Up to the passage of the Act of October 1, 1888, all the parts of the Act of September 13, 1888, which existed independently of the ratification of the treaty with China of March 12, 1888, remained in force.[35] Sections 1 and 2 have been held never to have been operative[36] as have sections 2 to 4.[37] Sections 5 to 14 have been held to be binding and in full force,[38] although the Supreme Court has held that it is doubtful if section 8 ever went into effect,[39] and that section 12 was not to be regarded as binding on the courts.[40] Section 13 has been uniformly held to express the existing law.[41] The Act of October 1st, however, revoked all privileges conferred on Chinese laborers by sections 5, 6 and 7 of the Act of September 13, 1888.[42]

(D.) The Act of May 5, 1892.[43]

Generally speaking, the Acts of 1888 were limited in their operation to Chinese persons unlawfully coming into

[33]Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770.

[34]United States v. Chu Chee, *supra.*

[35]United States v. Lee Hoy, 48 Fed. 825; United States v. Chong Sam, 47 Fed. 878; United States v. Jim, 47 Fed. 431.

[36]*Ex parte* Ng Quong Ming, 135 Fed. 378.

[37]United States v. Long Hop, 55 Fed. 58.

[38]Hong Wing v. United States, 142 Fed. 128.

[39]Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.

[40]Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634.

[41]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121; United States v. Jim, 47 Fed. 431.

[42]*Ex parte* Ng Quong Ming, *supra.*

[43]27 Stat. at L. 25.

the United States.[44] The Act of May 5, 1892, however, as amended by the Act of November 3, 1893,[45] was primarily directed at Chinese persons unlawfully in the United States. It extended by ten years the time within which Chinese laborers should be barred from admission to this country, and provided for the deportation of any person of Chinese nationality not lawfully entitled to remain in the United States.[46] Laying aside section 5 it deals with two classes of Chinese persons, first those not entitled to be or remain in the United States, and, second, those entitled to remain therein. "These words of description neither confirm nor take away any right, but simply designate the Chinese persons who were authorized or permitted to remain in the United States under the laws and treaties existing at the time of the passage of this act."[47]

Certificates of Registration, or Residence.

Sections 1, 2, 3 and 6, construed together, give the United States Commissioner jurisdiction for deportation purposes over Chinese laborers without the certificates of residence required by the act. The obligation imposed by section 3 on Chinese persons to prove affirmatively their right to remain in the United States has been held consistent with the principle that every legislature has the right to prescribe the evidence which is to be received as well as the effect thereof in the courts,[48] and to be included in the power to prescribe the conditions under which aliens may enter or remain in the United States.[49] Moreover, this section has been held to give rise to the presumption of law that Chinese persons and persons of Chinese descent

[44] *In re* Yew Bing Hi, 128 Fed. 319.

[45] *Post* p. 96.

[46] United States v. Yong Yew, 83 Fed. 832.

[47] Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[48] Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; Low Foon Yin v. United States, 145 Fed. 741; *In re* Sing Lee, 54 Fed. 334.

[49] United States v. Williams, 83 Fed. 997.

who have failed to carry out its requirements are not entitled to remain in the country.[50] But section 4, which provided for imprisonment at hard labor for any Chinese persons adjudged to be unlawfully in the United States has been universally condemned,[51] and authoritatively pronounced unconstitutional by the Supreme Court of the United States.[52]

The manifest objects of sections 6 and 7 were to provide a system of regulation and identification of Chinese laborers, to require them to obtain certificates of residence, and, if they did not do so within a year, to have them removed from the country.[53] But the provision in section 6 to the effect that a Chinese laborer who failed to procure a certificate within a year should be deemed unlawfully within the United States was held to mean not that this fact should be held to be conclusively established against him, but only that the want of a certificate should be *prima facie* evidence that he was not entitled to remain in the country; that he should be so far presumed not to be entitled to remain in the United States that the proper officer or officers might arrest him and take him before a judge for a judicial hearing, to determine the only facts which, under the Act could have a material bearing on the question as to whether he should go or remain.[54] In the absence of the certificate it has been held that proof of residence in the United States at the time of the passage of the act was insufficient to prove the right of the prisoner to remain; that to be sufficient, such proof must be coupled with a good and sufficient reason why the certificate was not procured;[55] and the provision in section 6 that on a satisfactory showing the alien should be granted a certifi-

[50] *In re* Jew Wong Loy, 91 Fed. 240.
[51] United States v. Wong Dep Ken, 57 Fed. 206.
[52] Wong Wing v. United States, 163 U. S. 230, 41 Law Ed. 140.
[53] Fong Yue Ting v. United States, *supra.*
[54] Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.
[55] *In re* Ny Look, 56 Fed. 81.

cate on payment of costs was held to refer to the costs of the certificate only, and not to the costs of the proceedings.[56]

"It is a well known fact," said the court in the case of United States v. Chew Cheong,[57] "that but few of the Chinese in the United States made application for the certificate of residence provided for in the Act of May 6, 1892. It was claimed as an excuse for this disregard of the law that they were advised by counsel that the law was not constitutional. It was, however, sustained in the case of Fong Yue Ting against the United States. Thereafter Congress passed the amendatory Act of November 3, 1893."

(E.) The Act of November 3, 1893.[58]

This act granted an extension of six months' time after its passage in which Chinese laborers within the limits of the United States and who were entitled to remain therein before the passage of the Act of May 6, 1892, might register as provided in the preceding act;[59] but this privilege was not accorded to Chinese heretofore convicted of felonies under Federal or state laws.[60]

Chinese "Merchants" and "Laborers."

In its second section the act defines "laborers" and "merchants," and prescribes the evidence by which persons calling themselves merchants and who seek admission to the United States claiming their right to enter on a prior commercial domicile acquired in this country may come in.

"For the first time in the history of legislation having for its purpose the exclusion of certain Chinese from the country or their deportation when here in violation of the statutes of the United States, and the admission of certain

[56] United States v. Tye, 70 Fed. 318.
[57] 61 Fed. 200.
[58] 28 Stat. at L. 7.
[59] Section 1.
[60] *Ibid.*

others to the country, or giving the right to remain, Congress.....defined those theretofore designated generally as merchants or laborers;"[61] but the definitions given under the term "laborer" do not imply that that term is restricted to the classes specifically named. The privileges of real merchants were not disturbed but were left as granted by the treaty of 1880, the purpose of section 2 being only to prevent false ones from claiming these privileges. Consequently the appropriate provisions of section 2 mean only that the interest of the merchant must be real, and appear in the partnership articles in his own name and not that his name must appear in the firm name or designation.[62] In so far as the section provides for the proof of mercantile status for the period of one year prior to the departure of returning merchants, (a provision unqualifiedly held constitutional,)[63] it has been more strictly construed, as the courts have uniformly held that it applies to Chinese persons who left the United States prior to the passage of the act as well as to those leaving thereafter.[64] So far as the registration provisions of the act are concerned they have been construed to affect only those Chinamen in the United States at the time of the passage of the act who were then subject to registration. Those not required to register were not affected[65] nor did the extension of registration, as before pointed out[66] apply to Chinese persons theretofore convicted of a felony. Although section 2 provides that pending the execution of an order of deportation the Chinese person shall

[61]Tom Hong v. United States, 193 U. S. 517, 48 Law Ed. 772; and see United States v. Yong Yeu, 83 Fed. 832.

[62]Tom Hong v. United States, *supra;* Lee Kan v. United States, 62 Fed. 914; see also Wom Ah Gar v. United States, 94 Fed. 831; Wong Fong v. United States, 77 Fed. 168.

[63]Li Sing v. United States, 180 U. S. 485, 45 Law Ed. 634.

[64]United States v. Loo Way, 68 Fed. 475; Lai Moy v. United States, 66 Fed. 955; Lew Jin v. United States, 66 Fed. 953; *In re* Yee Lung, also *In re* Yue Soon, 61 Fed. 641.

[65]*In re* Yew Bing Hi, 128 Fed. 319.

[66]*Ante,* p. 96.

remain in the custody of the United States marshal and shall not be admitted to bail, the section has been held to allow the granting of bail in deportation proceedings at any stage not final.[67] It has been decided that the Act of May 6, 1882, as amended by that of November 3, 1893, was not repealed in any of its parts by the Act of April 29, 1902.[68]

(F.) The Act of August 18, 1894.[69]

Final Determination of Right of Aliens to Enter Vested in Administrative Officers.

This act provided for the enforcement of the Chinese exclusion Act of May 5, 1892, the sum of $50,000.00, and further that "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary of the Treasury."

This act was held constitutional by the Supreme Court of the United States[70] on the ground that not only was it within the power of Congress to designate the conditions under which aliens might enter or remain in the country, but it was equally within its power to vest the final determination of such rights in executive officers, to the complete exclusion of the courts. In this case the right to enter was claimed on the ground of commercial domicile by the applicant, a Chinese merchant who stated that he left the United States in 1894. In later cases where the right to enter was based on the ground that the applicant

[67] *In re* Ah Tai, 125 Fed. 795; and see Chapter on Deportation Procedure, *post*, p. 653.

[68] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; United States v. Lee Yen Tai, 185 U. S. 213, 46 Law Ed. 878; Tom Heong v. United States, 193 U. S. 517, 48 Law Ed. 772.

[69] 28 Stat. at L. 390.

[70] Lem Moon Sing v. United States, 158 U. S. 538, 39 Law Ed. 1082.

was a citizen of the United States this act has been held to apply notwithstanding the claim of citizenship.[71] The act gave no additional power to departmental officers but simply made their findings final as to the right of Chinese persons not laborers to come into the United States; it did not affect them in their relation with such persons not laborers already in the United States.[72] It has been held not to apply to alien seamen.[74]

(G.) The Act of March 3, 1901[75]

was entitled "An act supplementary to an act, entitled 'An act to prohibit the coming of Chinese persons into the United States,' approved May 5, 1892, and fixing the compensation of commissioners in such cases." By this act the district attorney of the district in which any Chinese person was arrested for unlawful presence in or entrance into this country, was authorized to designate the United State Commissioner within the district and before whom the Chinese person should be taken for hearing.[76] The fee of the United States Commissioner for hearing a case arising under the Chinese exclusion laws was set at $5.00.[77] And it was provided that no warrant of arrest should be issued by United States Commissioners except upon the sworn complaint of the United States District Attorney and other officials duly enumerated unless the issuance of the warrant should first be approved or requested in writing by the United States District Attorney of the district in which issued.[78]

[71]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917.

[72]United States v. Chin Fee, 94 Fed. 828.

[74]United States v. Burke, 99 Fed. 895.

[75]31 Stat. at L. 1093.

[76]Section 1.

[77]Section 2.

[78]Section 3.

(H.) The Act of April 29, 1902,[79] as Amended and Re-enacted by Section 5 of the Deficiency Act of April 27, 1904.

Chinese Exclusion Laws Made Applicable to Insular Territory.

This act, as amended, re-enacted without limitation all the laws in force on the date of its passage regarding the admission of Chinese persons into the United States specially including in such re-enactment sections 5, 6, 7, 8, 9, 10 and 11, 13 and 14 of the Act of September 13, 1888, and extended and continued the same in so far as they were not inconsistent with treaty obligations. The act was made applicable to the island territory under the jurisdiction of the United States.[80] It further provided that the Secretary of Commerce and Labor was authorized to make such regulations on the subject of Chinese exclusion not inconsistent with the laws of the land as he might deem necessary and proper to execute the provisions of the act and the acts continued and extended thereby[81] and of the treaty of December 8, 1894.[82] Further provision was made for the registration through certificates of residence in the insular territory wherein they might reside of Chinese laborers in any of the insular territory of the United States with the exception of Hawaii; and authorized the Philippine Commission to make all the necessary regulations for the enforcement of this provision in the Philippine Islands.[83]

[79] 32 Stat. at L., part 1, p. 176; 33 Stat. at L. 394-428.

[80] Section 1.

[81] By the Act of Feb. 14, 1903 (32 Stat. at L. 825) the Commissioner General of Immigration, the Bureau of Immigration, and the Immigration Service were transferred from the Treasury Department to the Department of Commerce and Labor, and by the Act of June 6, 1900 (31 Stat. at L. 588-611) the Commissioner General of Immigration was assigned the administration of the Chinese exclusion laws under the direction of the Secretary of Commerce and Labor.

[82] *Ante*, p. 30.

[83] Section 4.

This act was passed in view of the expiration on May 5, 1902, of the Act of May 5, 1902, and for the purpose of continuing the exclusion laws in force during the existence of the treaty with China of December 8, 1894.[84] It continued the exclusion laws then in force only so far as the same were not inconsistent with treaty obligations, to wit, those of the treaty of December 8, 1894, which provide for the exclusion of Chinese laborers from the United States only until December 8, 1904.[85] That treaty was denounced by China and expired under such denunciation in December of that year. The Act of 1902 did not repeal the Acts of 1892 and 1893 in any way.[86]

(I.) The Act of February 14, 1903.[87]

Transfer of Administration of Chinese Exclusion Laws from the Treasury Department to the Department of Commerce and Labor.

This act, entitled "An act to establish the Department of Commerce and Labor," transferred all matters relating to the regulation of the admission of Chinese from the jurisdiction of the Secretary of the Treasury to the Department of Commerce and Labor.[88]

(J.) The Act of April 27, 1904.[89]

Section 5 of this act amends section 1 of the Act of April 29, 1902,[90] re-enacting extending and continuing the existing exclusion laws then in force and was passed in view

[84]Hong Wing v. United States, 142 Fed. 128.

[85]*Ibid.*

[86]Tom Heong v. United States, 193 U. S. 517, 48 Law Ed. 772; Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; United States v. Lee Yen Tai, 185 U. S. 213, 46 Law Ed. 878.

[87]32 Stat. at L. 825.

[88]And see United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917.

[89]33 Stat. at L. 428.

[90]Stat. at L. part 1, p. 176; *ante*, p. 100.

of the coming expiration on December 8, 1904, of the treaty with China of December 8, 1894, and, it has been said, for the purpose of continuing in force the existing exclusion laws after such expiration regardless of treaty obligations,[91] and in so doing kept in force sections 5 to 14 inclusive of the Act of September 13, 1888, with the exception of section 12.

(K.) Application of the Immigration Acts to Chinese.

Section 36 of the immigration Act of March 3, 1903,[92] provided that all acts and parts of acts inconsistent with the act itself were thereby repealed and that the act should not be construed to repeal, alter or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent. Section 43 of the present immigration law[93] provides that "this act shall not be construed to repeal, alter or amend existing law relating to the immigration or exclusion of Chinese persons or persons of Chinese descent....." There can be no doubt that this act applies to Chinese although by its terms it specially provides that all special legislation in regard to them in the form of the Chinese exclusion acts shall not be affected by it; and this appears all the more clear in view of the proviso of the 21st section of the immigration act to the effect that in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or is subject to deportation under the provisions of this act or of any law of the United States he shall cause such alien to be deported.

The courts have differed as to the extent to which the immigration acts apply to members of the Chinese race. On the one hand it has been held that the exclusion acts are to be read in *pari materia* there-

[91] Hong Wing v. United States, 142 Fed. 128.
[92] 32 Stat. at L. part 1, p. 1213.
[93] Act of Feb. 20, 1907, 34 Stat. at L., part 1, p. 898.

with in their application to Chinese aliens seeking entrance to this country.[94] But when this case was brought to the Circuit Court of Appeals it was held that the special provisions of the Act of February 20th, 1907, relating to deportation do not apply to Chinese laborers because they are already excluded by the exclusion acts which provide specially for their deportation.[95] This would seem to be on the principle that the Act of February 20th, being a general statute, silently excludes from its operation the cases provided for in the special statutes applicable to Chinese which preceded it, and that consequently it applies only to such Chinese as are not subject to the operation of the particular Chinese enactment. If an alien is disqualified under the Chinese exclusion acts it is because he is a Chinese person who has not shown that he is entitled to enter as provided by the treaties of this country with China or by the acts of Congress applicable to his case; not because he is an alien immigrant. It is plain that if in addition to his disqualifications as a member of the Chinese race he has others which prohibit his entrance as an alien immigrant he is a proper subject of exclusion under the immigration laws as well as those regulating the admission of Mongolians. But the case has arisen where the identical disability which disqualified him as a Chinaman under the Chinese exclusion acts, disqualifies him as an alien under the immigration acts. In the case of Wong You v. United States[96] the question before the court was whether he should be deported under the Chinese exclusion acts or the immigration act, and the court held on the principle of statutory construction above cited that in such a case deportation under the Chinese exclusion act was the correct procedure. The question involved in such cases is not whether the Government has the right to deport but whether the person held for deportation

[94] *Ex parte* Wong You, 176 Fed. 933.
[95] Wong You v. United States, 181 Fed. 313.
[96] *Ibid.*

has the right to demand that the deportation proceedings be those designated under the exclusion acts and not under the immigration act. That is, whether he shall be brought before a United States Commissioner or before the Secretary of Commerce and Labor or his deputy. If before the former, he has as a matter of right his appeal from the excluding decision of the commissioner to the Federal judge of the district; if before the latter, no such right is given by statute. In other words, the practical question in such a case with both the person proceeded against and the department is whether the former is entitled to a judicial or administrative determination of his right to remain in the United States. As stated on a later page,[97] there seems to be no reason why Congress may not, in the exercise of its sovereign right to exclude or expel, provide at its option, one or more methods best adapted to bring about the desired result; and if this is so the reason for applying the rule of statutory construction adopted by the court in the case last mentioned does not clearly appear.[98]

(L.) Crimes and Penalties Under the Chinese Exclusion Acts.

Unlawfully Bringing Chinese Persons into the United States.

The Chinese Exclusion Act of 1882, as amended by that of 1884, penalized the master of a vessel who should knowingly bring in or attempt to land or permit to be landed, any Chinese laborer, with a fine of $500 and imprisonment not exceeding one year as an additional penalty which might or might not be imposed;[99] and further

[97] *Post*, p. 277.

[98] The case of Wong You v. United States was reversed by the Supreme Court of the United States. See Chapter on Deportation Procedure, *post*, p. 673.

[99] Section 2.

provided in its eleventh section that any person who should knowingly bring in or cause to be brought into the United States by land, or who should aid or abet the same, or aid or abet the landing in the United States from any vessel of any Chinese person not lawfully entitled to enter the United States should be deemed guilty of a misdemeanor and be fined in a sum not exceeding $1,000 and be imprisoned for a term not exceeding one year.

The Act of May 6, 1882, was held not to apply to the act of bringing back to the United States a Chinese member of the crew who had shipped with the master from San Francisco for the return voyage;[100] nor for bringing in a Chinese subject from Hong Kong.[1]

The Act of October 1, 1888, enacted to supplement the Act of 1882, as amended by the Act of 1884, provided in its third section that the liabilities, penalties, and forfeitures imposed by sections 2, 10, 11 and 12 of that act were thereby extended and made applicable to the provisions of this Act of October 1, 1888. Section 9 of the Act of September 13, 1888,[2] has been held to have been constantly in force since the passage of the act, and, among other sections, was specifically re-enacted by the Act of April 29, 1902.

Section 9 of the Act of September 13, 1888, provided "that the master of any vessel who shall knowingly bring within the United States on such vessel and land, or attempt to land, or permit to be landed any Chinese laborer or other Chinese person, in contravention of the provisions of this act, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished with a fine of not less than five hundred dollars nor more than one thousand

[100] *In re* Ah Sing, 13 Fed. 286.

[1] United States v. Douglas, 17 Fed. 364, no longer authoritative, in view of section 3 of the Act of September 13, 1888, reading "The provisions of this act shall apply to all persons of the Chinese race, whether subjects of China or any other foreign power." See *In re* Ah Sing, 18 Fed. 28.

[2] *Supra.*

dollars, in the discretion of the court, for every Chinese laborer or other person so brought, and may also be imprisoned for a term of not less than one year, nor more than five years, in the discretion of the court." [3]

"Knowingly Bring."

The word "knowingly" has been held to apply not only to the words immediately succeeding, "being within the United States," but to the landing or attempted landing, or the permitting to be landed of any Chinese person.[4] And, as Chinese seamen are not excluded by the terms of the act, the master cannot be indicted under this section for bringing Chinese employed on his vessel to the ports of the United States;[5] this irrespective of whether the port at which such a seaman is allowed to land is a terminus or not, as those the landing of which was made penal by the statute are Chinamen excluded absolutely or conditionally under the acts.[6]

The Indictment.

An indictment under this section which fails to allege that the landing was "knowingly" permitted is insufficient[7] and the indictment, in order to stand, must negative the exceptions of the section;[8] but an indictment is sufficient which alleges that a Chinese person was allowed to land from a vessel, and that such landing was not by reason "of any necessity," as that allegation sufficiently negatives the exceptions of the section.[9] However, if the indictment fails to state that the "bringing" a Chinese seaman to the

[3]Thereby repealing the corresponding section of the Act of May 6, 1882, as amended by that of July 5, 1884. United States v. Durie, 170 Fed. 624.

[4]United States v. Walker, 156 Fed. 987; United States v. Rout, 170 Fed. 201.

[5]United States v. Jamieson, 185 Fed. 165.

[6]*Ibid.*

[7]*Supra,* note 1.

[8]United States v. Wood, 159 Fed. 187; United States v. Wood, 168 Fed. 438.

[9]United States v. Graham, 164 Fed. 654.

United States was done with the intent of leaving him in this country, it is faulty and will be quashed,[10] for the obvious reason that a Chinese seaman brought to the United States merely in his capacity as such and with no intention on his part or that of the master of a cessation of his duties is not within the classes absolutely or conditionally excluded by the act.

Evidence

of landing or attempted landing is sufficiently shown where it appears that the master brought his vessel to a mooring point, and there received the Chinese inspector on board without revealing the presence on the vessel of eight Chinese whose concealment in the hold was detected by the inspector.[11]

Aiding or Abetting the Landing of Chinese Persons.

Section 11 of the Act of May 5, 1882, as amended by the Act of 1884, reads as follows: "That any person (thereby including of course, the master of a vessel) who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year."

It has been said—by way of dictum—that when, pending a hearing on *habeas corpus,* the vessel on which petitioner has arrived has left port, and the master refuses to receive him on his return, such refusal constitutes an aiding and abetting or permitting the land of such alien, and that the master and ship incur the penalties prescribed by the act.[12] The act which in common with the aiding or abet-

[10]United States v. Jamieson, 185 Fed. 165.
[11]Gerard v. United States, 159 Fed. 421.
[12]Case of the Unused Tag, 21 Fed. 701.

ting thereof is prohibited by this section is the "bringing into or causing to be brought into the United States by land" or the "landing in the United States from any vessel," of a Chinese person. There was no question here of bringing in by land, as the alien landed upon the vessel which brought him. The Supreme Court has defined the words "to land" as meaning to go ashore. "The words must be taken in their literal sense. 'Landing from such vessel' takes place and is complete the moment the vessel is left and the shore is reached." [13] In the case under discussion it was stated that the failure to take back on board would be aiding or abetting a landing, although in point of fact the vessel had left the United States and returned before the refusal to receive on board took place. There would seem to be considerable doubt as to the correctness of this view, both on account of the obvious difference existing between the act of landing an alien and taking him back on board, as well as on account of the fact that the act held to constitute the aiding or abetting, to wit, the refusal to receive on board, was separated by months in point of time from the original landing of the alien from the vessel. This provision, like other penal provisions should be strictly construed; and the extremely broad interpretation on which the view was based would certainly seem to be open to criticism. Such appears to be the view taken in a later decision[14] holding that the aiding and abetting of the landing of Chinese persons is criminal only in those cases in which the bringing of such persons is accomplished in the same vessel and on the voyage culminating at the time of the landing.[15]

[13]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

[14]United States v. Trumbull, 46 Fed. 755.

[15]It has been held that the Act of April 29, 1902, by re-enacting existing Chinese exclusion laws, and making them applicable to the Island territory under the jurisdiction of the United States, makes the aiding and abetting of the landing on the mainland territory of the United States of a Chinese person not legally entitled to enter therein from such island territory, a misdemeanor. U. S. v. Wong Kock Yii, 3 U. S. D. Ct. Hawaii 87.

The Indictment.

An indictment for landing or abetting a landing in the United States from any vessel of any Chinese person not lawfully entitled to land is fatally defective where it fails to allege that such person was brought into the country in the vessel named or that he was ever unlawfully brought into the United States.[16] While indictments under the penal provisions of these acts must comply with the strict requirements of ordinary criminal procedure, it has been held that objections thereto on the ground of repugnance cannot be reversed on appeal when not raised in the lower court;[17] and generally speaking an indictment will be sustained if there is any act under which it can be enforced even though that act be not specifically mentioned therein.[18]

Forfeiture of Vessel for Violation of the Statute.

Section 10 provided for the forfeiture of the vessel whose master should knowingly violate any of the provisions of the act, but a vessel stolen from its owner and used while out of his control, without his knowledge or consent in bringing in Chinese laborers in violation of law, does not for that cause become liable to forfeiture. To work such forfeiture a master must knowingly violate the statute.[19] Section 9 of the Act of September 13, 1888, punished with a fine of not less than five hundred dollars and imprisonment of not less than one or more than five years the master of a vessel knowingly bringing within the United States on such vessel, and landing or attempting to land or permitting to be landed any Chinese laborer or other Chinese person in contravention of the provisions of the act; and it was held that where there was an agreement by the owner to sell a schooner by payment on install-

[16]United States v. Trumbull, 46 Fed. 755.
[17]Sims v. United States, 121 Fed. 515.
[18]United States v. Wood, 168 Fed. 438.
[19]United States v. "George E. Wilton," 43 Fed. 606.

ments, the title to remain in the owner until full payment of the purchase price, and the purchaser was put in possession and appointed master, this was held sufficient to authorize the appointment of a new master by the purchaser, and to render the vessel subject to condemnation and sale for the importation by the new master of Chinese contrary to the act.[20] But section 10 thereof excepted from the terms of section 9 any master whose vessel should come within the jurisdiction of the United States in distress or under stress of weather or touching at any port of the United States on its voyage to any foreign port or place; but Chinese persons or laborers on such vessels were not permitted to land except in case of necessity and must depart with the vessel on leaving port. The word vessel includes tackle, furniture, apparel and appurtenances, and among the latter the ship's instruments, compasses, chronometers, etc.[21] It was held in an early Federal case that a ship touches at a port of the United States within the meaning of the act when she calls there for orders or for a cargo destined to a foreign port.[22]

Counterfeiting Certificates Under the Chinese Exclusion Acts.

Section 7 of the Act of 1882 provides that any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined in the sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

Section 11 of the Act of September 13, 1888, characterized as a misdemeanor and penalized with fine and impris-

[20]The Frolic, 148 Fed. 918.
[21]The Frolic, 148 Fed. 921.
[22]*In re* Moncan, 14 Fed. 44.

onment the act of knowingly and falsely altering or substituting and name for the name written in any certificate required by the act, or forging such certificate, or knowingly uttering any forged or fraudulent certificate, or for a person other than the one to whom the certificate was issued falsely to present the same. Unlike the Act of 1882, which penalizes the alteration or falsification of the "section six" certificate only, section 11 includes within its scope "any certificate herein required" thereby including the return certificate provided by section 7 thereof.

Section 8 of the Act of May 5, 1892, penalized the counterfeiting of the certificates of registration in almost the same terms used in section 11 of the Act of 1888; except that, whereas under the prior act fine and imprisonment constituted the penalty, under the later statute either fine or imprisonment may be imposed.

Failure to Deliver Lists of Chinese Passengers.

Section 8 of the Act of May 5, 1882, provides that the captain of a vessel coming to a United States port and bringing Chinese passengers, shall deliver a list of such passengers, duly sworn to by him to the Collector of Customs of the district in which the vessel arrives, and that any refusal or wilful neglect of such master so to do will render him subject to the penalties and forfeitures provided for refusal or neglect to report and deliver a manifest of the cargo.

3. *The Operation of the Immigration and Chinese Exclusion Laws in the Insular Possessions.*

(A.) The Philippine Islands.

(1.) In General.

The Act of April 29, 1902,[23] which provided in its second section for the application of the Chinese exclusion laws to the Island territory under the jurisdiction of the United

[23] 32 Stats., part 1, p. 176. *Ante*, p. 100.

States, and in its fourth section for the registration of Chinese laborers in the Philippine Islands, and authorized the Philippine Commission to make all regulations and provisions for carrying out the purpose of the act was followed by Act No. 702 of the Philippines Commission,[24] which was enacted for the special purpose of carrying into effect and enforcing the provisions of section 4.

On April 14, 1899, the War Department issued Circular No. 13, signed by the acting Secretary of War, in which it was stated that: "The laws and regulations governing immigration to the United States are hereby declared to be in effect in the territory under government of the military forces of the United States, but collectors of customs are directed to enforce said laws and regulations until the establishment of immigration stations in the said territory....." On June 6, 1899, the acting Secretary of War issued an order in which he stated that in accordance with the provisions of Circular No. 13 he proclaimed, published and applied to the Philippine Islands immigration regulations for the information and guidance of all concerned.[25] These regulations briefly required enforcement of all the acts of Congress relating to immigration published prior to June 6, 1899, and the collectors of customs of the islands were charged with the execution of the immigration and labor laws. Article III of these regulations provides that collectors of customs shall employ all customs, immigration and other officers assigned to them for duty in the enforcement of the immigration acts; and all such officers are hereby designated and hereby authorized to act as immigration officers. Pursuant to the requirements of these regulations the collector of customs for the Philippine Archipelago issued his Circular No. 4 on December 31, 1902, by which he notified all customs col-

[24] Vol. 2, Pub. Laws enacted by the Philippines Commission, p. 363; Compilation of the Acts of the Philippine Commission, secs. 3858-68, incl., p. 1138.

lectors that those regulations were to be enforced as well as the acts of Congress relating to immigration. So that at the time Congress passed the immigration Act of March 3, 1903, the Acts of March 3, 1875,[26] August 3, 1882,[27] February 26, 1885,[28] and the Chinese exclusion Act of June 6, 1900,[29] were enforced in the Philippines by the collectors of customs, their inspectors and immigration officers, with the right of appeal to the insular collector under the supervision and direction of the Secretary of War and the members of the Philippine Commission.

The Chinese exclusion acts were also administered and enforced by the collectors of customs of the Islands and their immigration officers and continue to be so enforced by them, although by the Act of June 6, 1900, the Commissioner General of Immigration was charged with the enforcement of that law and although by the provisions of the Act of Congress of April 29, 1902,[30] the Chinese exclusion laws were made applicable to the Philippine Islands. In the Customs Administrative Act passed by the Philippine Commission February 6, 1902,[31] it is made the duty of the customs service to execute the laws relating to immigration, and by section nineteen thereof it is made the duty of the insular collector to make and promulgate general rules and regulations not inconsistent with the law and subject to the approval of the Secretary of Finance and Justice, directing the manner of executing the customs laws and laws relating to commerce and immigration.[32]

In summing up the effect of the organic act of the Phil-

[26] 18 Stat. at L., part 3, p. 477.
[27] 22 Stat. at L., p. 214.
[28] 23 Stat. at L., p. 332.
[29] 31 Stat. at L., p. 610.
[30] 32 Stat. at L., p. 428.
[31] Public Laws of the Philippine Commission, Vol. 1, p. 788, No. 355.
[32] The above is taken almost literally from the case, entitled *In re* Allen, 2 Philippine Supreme Court Reports, p. 630.

ippine Islands[33] with particular reference to sections 2, 3, 86 and 87 thereof,[34] and also the Spooner amendment of March 2, 1901, the Supreme Court of the Philippine Islands says:[35] "It thus appears that Congress specially authorized the President to control the commercial intercourse with the Islands by such rules as he might deem most conducive to the public interests; that that body ratified his action in creating the Commission, authorizing it to exercise powers of government to the extent and in the manner and form and subject to the control set forth in his instructions,[36] which instructions made all their acts subject to the approval of the Secretary of War; that Congress ratified the acts of the Commission in organizing all of its departments of government including the immigration bureau..... It is difficult if not impossible to consider the foregoing action taken by the President and the Secretary of War, to read the acts of Congress and the acts of the Philippine Commission referred to above as well as the orders, rules, regulations and circulars relating to immigration without reaching the conclusion that the whole administration of affairs in these islands vested in the Executive, had been exercised down to March 3, 1903, by the President personally or through the War Department and the Secretary of War, or the Commission. Congress was, of course, aware of this exercise of power and authority when the immigration laws were revised on

[33]Act of Congress, July 1, 1902, 32 Stat. at L. 691; Compilation Acts of the Philippine Commission, p. 22.

[34]Ratifying the acts of the President taken by virtue of the authority vested in him as Commander-in-Chief of the Army and Navy as set forth in his order of July 12, 1898, providing for a tariff of duties and taxes to be levied and collected at the ports of the Philippines; providing that the President shall until otherwise provided by Congress continue to regulate and control commercial intercourse in the Islands by rules and regulations conducive to the public interest and general welfare; reserving the power and authority in Congress to annul laws passed by the Philippine government; and continuing the Bureau of Insular Affairs.

[35]*In re* Allen, *Ibid.*

[36]President's Instructions, April 7, 1900.

that date, and was aware that these immigration laws had been executed in the Islands under the authority and supervision of the Secretary of War and the Philippine Commission, and that immigration inspectors had been appointed pursuant to his authority..... In promulgating this act of Congress in these islands Governor Taft stated that it had been decided by the legal adviser of the Secretary of War that while this law in its restriction upon the admission of aliens into the United States applies to the Philippines, the provisions therein made for the enforcement of the law by the Secretary of the Treasury, Department of the United States, and the Commissioner General of Immigration do not apply here, and that the new immigration law should be enforced in the same manner in these islands as the previous law on the same subject was enforced—that is through the collector of customs and his subordinate officers.

The Secretary of the Treasury must have also given a similar construction to this law, otherwise he would have without doubt have appointed immigration inspectors and established immigration stations in the islands long ago—in fact as far back as April 29, 1902, when the Chinese exclusion act was made applicable to the Philippines, he being then charged with its enforcement.

It follows that these two departments of the government, the two departments concerned in the enforcement of the immigration and exclusion laws, have held that the duty of administering these laws in the Philippines was to be continued in the customs department of the islands, and by its immigration inspectors..... It follows that until such time as the Secretary of the Treasury appoints others to execute the immigration laws the administration remains.....in the hands of those appointed by the President through the Secretary of War, and that, therefore, the Collector of Customs for the Archipelago has authority to enforce that law."

In referring to this decision in a later case[37] where the contention made by the appellee was that the customs officers in Manila had no power to enforce the immigration laws and that their execution was by law entrusted to the Secretary of Commerce and Labor the Supreme Court of the Philippines said: "This same contention was made *In re* Allen and was decided adversely to the claim of the appellee in that case. Since that decision Congress has passed the Act of February 6, 1905,[38] section 6 of which is as follows: 'That the immigration laws of the United States in force in the Philippine Islands shall be administered by the officers of the general government thereof designated by appropriate legislation of said government. . . . . .'"

(2.) Legislation Regulating the Admission of Immigrants.

The Act of Congress of February 20, 1907,[39]—the present immigration law—which in its thirty-third section includes within its jurisdiction the Philippine Islands, is necessarily the only law in force regulating the admission and expulsion of aliens other than Chinese.[40]

(3.) Legislation Regulating the Admission or Residence of Chinese.

(a.) Act No. 317 of the Philippine Commission.[41]

This act provides in its first section that no Chinaman who left the Philippine Island before August 13, 1898, and who had remained outside the Islands up to the date of the passage of the act and who would be excluded but for the orders heretofore issued by the military governor extending the time within which Chinese might be permitted

[37]Ngo Ti v. Shuster, 7 Philippine Reports, 351.

[38]33 Stat. at L., pt. 1, p. 692.

[39]34 Stat. at L. pt. 1, p. 898.

[40]The Philippine Decisions rendered on cases arising under this law are here cited in connection with the appropriate sections of the Immigration Act, *post*, p. 149.

[41]Public Laws enacted by the Philippine Commission, Vol. 1, p. 729.

to return should be permitted to enter the Islands; and, in its second section, that Chinese who had left the Islands since August 13, 1898, or who might leave in the future should be permitted to land only upon the production of a certificate of the collector of customs of the port of the Philippine Islands whence they departed, issued at the time of their departure. The period in which they might return was limited to one and one-half years and no extension of the period was to be granted for illness or any other cause by any authority.

(b.) Act No. 702 of the Philippine Commission.[42]

This act was passed for the purpose of carrying into effect the provisions of section four of the Act of Congress of April 29, 1902. It authorizes and directs the collector of customs for the Philippine Archipelago to make the registration of all Chinese laborers as prescribed by the Act of April 29, 1902,[44] and empowers him to make such rules and regulations as may be necessary for the efficient execution of the act and to prescribe the form of certificates of registration required thereby.[45] It prescribes the form of each certificate of registration and the payment of a fee of fifty cents to the collector of customs on receipt of the same by the applicant.[46] Any Chinese laborer within the limits of the Philippine Islands who neglects, fails or refuses to obtain the certificate of registration within the space of one year from the passage of the act and who is thereafter found to be without the certificate is made by the act subject to arrest and to be brought before any judge of a court of first instance in the Islands; and it is made the duty of such judge to order the deportation of the prisoner either to China or the country whence he came "unless he shall affirmatively establish clearly and to the

[42]Public Laws enacted by the Philippine Commission, Vol. 2, p. 363.
[44]Section 1.
[45]Section 2.
[46]Section 3.

satisfaction of such judge by at least one credible witness other than Chinese, that although lawfully in Philippine Islands at and ever since the passage of this act he has been made unable by reason of accident, sickness or other unavoidable cause to procure the certificate within the time prescribed by law, in which case the court shall order and adjudge that he procure the proper certificate within a reasonable time. Provision is, however, made that although any Chinese laborer who has for any reason failed to secure the certificate required by law within two years after the passage of the act shall be subject to deportation, if it appears that a certificate has in fact been procured in due time, but has been lost, a reasonable time will be allowed for procuring a duplicate. The right to obtain a duplicate certificate under the conditions cited is specially granted by the act; but no Chinese person theretofore convicted in any court of the states or territories of the United States or the Philippine Islands of a felony is permitted to register without special authority from the civil governor, now the Governor General.[47]

Section five provides that every "Chinese person" having a right to be and remain in the Philippine Islands shall obtain the certificate specified in section three; and that every "Chinese person" found without such certificate within the Philippine Islands after the expiration of the registration period shall be presumed in the absence of satisfactory proof to the contrary to be a Chinese laborer and shall be subject to deportation. Section seven provides that every "Chinese person" who may be entitled to come into the Philippines may upon request be given a certificate containing data to be prescribed by the Insular Collector of Customs.

These provisions seem not altogether unworthy of comment. As before stated, this act was passed by the Philippine Commission in the exercise of the powers specially

[47] Section 4.

conferred upon it by section four of the Act of Congress of April 29, 1902, as its title indicates. That section designates one class of Chinese—the laboring class—on the members of which it imposes the obligation of obtaining a certificate of registration in the Philippine Islands; and the authority conferred upon the Commission would seem to be limited to providing methods whereby the registration of the members of the particular class should be brought about; and this view would seem to be supported by the fact that the Act of May 5, 1892, the provisions of which were kept in force by the first section of the Act of April 29, 1902, has invariably been construed by the courts to impose upon Chinese laborers alone the obligation of obtaining certificates of registration.[48] The Philippine Commission was not authorized by Congress to create or enact a law calling for the registration of Chinese in the Philippine Islands but simply to "make all regulations and provisions necessary for the enforcement" of section four of the Act of 1902. This being so, it is difficult to account for the use of the words "Chinese person" in section five of the Philippine act, except on the assumption that the phrase was used in particular connection with the provision of that section to the effect that in the absence of the possession of a certificate after the expiration of the time required by statute in which it might be obtained, such Chinese as could not present a certificate were to presumed to be laborers—in other words that the scrivener was unwilling to allude to a Chinese person as a laborer until the happening of the condition from which the law inferred that he must necessarily be one.[49] Again, if all

[48]See *post*, pp. 585, 586.

[49]In providing that a Chinese person found without such certificate he shall be deemed a laborer, it may be questioned whether or not the Philippine Commission was strictly within the authority with which it was vested by Congress to administer existing Chinese exclusion laws. Nowhere does the Act of 1892, as amended by that of 1893, provide that failure to possess a certificate on the part of a Chinese person shall give rise to the presumption that he is a laborer. Those laws provided no more than that a Chinese

Chinese persons, including those of the exempt classes, were required by law to obtain certificates of residence under the Philippine statute, the absence of a certificate in the hands of a person of Chinese nationality after the expiration of the statutory period could not in logic and reason give rise to the presumption that he was necessarily a member of only one of the various classes who was under the obligation of obtaining such certificate; at best it could only give rise to the presumption that not having obtained it he was unlawfully in the country. The provision of the section creating the presumption would seem to indicate that the members of the Commission were well aware that, at the time of the drafting of the act, two things would be necessary to justify deportation of a Chinese person under this section: first, the absence of the certificate, after the expiration of the statutory period; second, that that person belonged to the laboring class.

A different view, however, seems to have been entertained by the Collector of Customs. In a circular addressed to collectors of customs and provincial treasurers of the islands, he says:[50] "Your attention is called to the fact that while by sections one and four of Act No. 702 of the Philippine Commission, only Chinese 'laborers' are positively compelled to register, by section five of the same act 'every Chinese person' is required to obtain a certificate of registration prescribed by said Act No. 702 as evidence of his or her right to remain in these Islands, and the failure to obtain such certificate subjects 'any Chinese person' to being presumed to be a laborer and to deportation. As this requirement clearly makes it necessary for all classes of Chinese persons who desire to remain in these Islands to obtain a certificate of residence, it is proper that, etc."

laborer without a certificate shall be deemed to be unlawfully in the United States, unless he can show in the mode prescribed by statute, that for some good reason he failed to get one.

[50] Chinese and immigration circulars No. 110, June 27, 1903.

The Philippines Supreme Court does not seem to have shared the view taken by the collector. In the case of the United States v. Sy Quiat,[51] it was held that a Chinese person who was arrested in the Philippine Islands without the certificate was free to prove if he could, his mercantile status during the registration period; and this decision was followed in a later case.[52] Again, in the case of the United States v. Chan Sam,[53] the following facts appeared: the appellant was charged with being a laborer, found after the expiration of the statutory period to be unprovided with a certificate of registration as prescribed by Act 702. It was shown that he entered the Philippine Islands in 1902 or 1903 without the consent of the immigration officers and while a member of the laboring class, that he continued a member of such class until January, 1907, having without cause failed to procure or to attempt to procure the certificate and that he stayed in the Philippine Islands until arrested in September, 1909. It was admitted that prior to that time he had become a merchant. The court held that the residence of an unregistered Chinese laborer in the Philippine Islands after the date prescribed by law for the issuance of registration certificates has elapsed, is unlawful, and subjects him to deportation, and that his liability to deportation continues as the result of his unlawful residence even though he may thereafter cease to be a laborer in fact. Thus it is recognized in these cases that certificates of registration are not required of members of the exempt classes.

Section six is in effect a re-enactment of section eleven of the Act of September 13, 1888,[54] which penalizes the falsification of or forging, or uttering any false, certificate of registration. The Supreme Court of the Philippines has held that the act of obtaining a "section six" certificate,

[51] Vol. 12, Philippine Reports, p. 676.

[52] United States v. Lim Co, 12 Philippine Reports 703.

[53] 17 Philippine Reports, p. 448.

[54] 25 Stat. at L. 476; *ante*, p. 89.

issued in China, stating that the person named therein who was in fact a Chinese laborer was a merchant, and of presenting it to the authorities, when the person presenting it knew that the Chinaman presenting it was not a merchant, constitutes the uttering of a fraudulent certificate in violation of section eleven of the Act of Congress of September 13, 1888, now embodied as section six in Act No. 702 of the Philippine Commission.[55]

Section 12 re-enacts section two of the Act of Congress of November 3, 1893,[56] insofar as it defines the terms "laborer" and "merchants;" but, in stating the significance of the term "merchant" "as employed in this act," those who drew it up apparently lost sight of the fact that except when used in connection with the definition of its meaning, the term merchant does not appear at all in the Philippine legislation on the subject. It has been held that the burden of proof is on a Chinese person to prove his mercantile status and to produce the partnership books as evidence of the fact that the alleged business is conducted in his and his partner's name, and that failure to produce such books gives rise to the presumption or justifiable inference that his name does not appear therein as a member of the firm; and that where a business in a store is conducted in the name of the appellant's partner, and not in his own name, and the license which the law requires to be taken out in connection with the conduct of the alleged business is also in the alleged partner's name, such business is not conducted in the appellant's name, and the proofs offered are insufficient to show his status as a merchant under this section.[57] And a Chinese person who owns and conducts a *pansiteria,* or "chow house" worth only $250.00 where raw food is cooked and served on the premises is not a merchant.[58]

[55]United States v. Ballantine, Vol. 5, p. 312, Philippine Reports.
[56]28 Stat. at L. 7, *ante,* p. 96.
[57]United States v. Sy Quiat, 12 Philippine Reports 676.
[58]United States v. Lim Co, 12 Philippine Reports 703.

Section 15 provides that in view of the impossibility of completing the registration of Chinese provided by Act 702 within one year from the passage of the Act of Congress of April 29, 1902, the time for such registration was extended for a period of six months to date from April 29, 1903.[59]

(B.) The Hawaiian Islands.

The cession of the Hawaiian Islands to the United States was accepted by the resolution approved by the President, July 7, 1898.[60] That resolution provided that there should be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as were at the time of its approval or might thereafter be allowed by the laws of the United States; and that no Chinese by reason of anything contained therein should be allowed to enter the United States from the Hawaiian Islands.

The Act of Congress of April 30, 1900,[61] entitled "An act to provide a Government for the Territory of Hawaii," provides in its fourth section that all persons who were citizens of the republic of Hawaii on August 12, 1898, were thereby declared to be citizens of the United States and citizens of the territory of Hawaii.

Section 101 provides that "Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence" as provided by the Act of May 5, 1892, as amended by the Act of November 3, 1893, "and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificate: *Provided, however,* That no Chinese laborer whether he shall hold such certifi-

[59]Other Philippine decisions are cited in connection with the appropriate sections of the Chinese exclusion acts, and the existing immigration law, post.

[60]30 Stat. at L. 751.

[61]31 Stat. at L. 141-161.

cate or not, shall be allowed to enter any state, territory or district of the United States from the Hawaiian Islands."[62]

In 1901 the opinion of the Attorney General of the United States[63] was requested upon the following questions:

1. Whether a person born in the Hawaiian Islands in 1885 of Chinese parents who were laborers, and taken to China with his mother in 1890, is entitled to re-enter the territory of Hawaii where his father still resides?

2. Whether the wife and children of a Chinese person who was naturalized in 1887 in Hawaii and still resides there are entitled to enter that territory "by virtue of the citizenship" of the husband and father?

In his opinion the Attorney General calls attention to the fact that the power of collective naturalization has been frequently exercised by the President and the Senate; and that the provision of section 4 of the organic act of Hawaii declaring that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are declared to be citizens of the United States, is an example of such legislation, and that since the constitution of the Republic of Hawaii (section 1, Article 17) provided that all persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the republic are citizens thereof, such persons, being citizens of the United States are not subject to the operation of the immigration acts. He says, "In my opinion considerations drawn from the general Chinese exclusion policy of the United States leading to the proposition that this grant of privilege (of citizenship) is difficult to conceive or impossible to suppose, may not justly be invoked

[62]A Chinese laborer who left the Hawaiian Islands after annexation in October, 1899, and returned in July, 1901, having failed to obtain a certificate of residence under this section held not entitled to come into the territory for the purpose of registering and not being in the Hawaiian Islands when the act took effect did not come within the statutory provision. United States v. Yong Ho, 1 U. S. D. Ct. Hawaii 1.

[63]23 Op. Atty. Gen. 345, Jan. 16, 1901.

to support a persuasion that Congress did not intend 'to admit to the full rights of citizenship a class of Chinese persons in a distant land, who if they had been domiciled in our midst could under no circumstances ever have become citizens of the United States. Nevertheless, this is precisely what Congress did. And it must be observed on the suggestion just quoted that while such Chinese persons being born in China would not have been entitled to *naturalization* in this country, on the other hand, if born in the United States under a parental status, as defined in the Wong Kim Ark case,[64] they would have been citizens of the United States by *birth* through the force of that decision." And in a subsequent opinion[65] the Attorney General again held that "any Chinese person who was in fact a citizen of the Republic of Hawaii under its constitution and laws on August 12, 1898, and who has not since that date voluntarily abandoned his citizenship or legally been deprived thereof, is a citizen of the United States."

This view has apparently received the sanction of the Department of State. In a communication forwarded by the United States Consul General at Shanghai to the American Minister at Pekin it appeared that a resident of Canton, China, applied at the consulate at that city for registration as an American citizen; that he had been a resident of the Hawaiian Islands for seventeen years before Hawaii was annexed to the United States, and that his papers showed that he was a naturalized Hawaiian subject; but he left Hawaii in 1897 for Canton, where immediately after his arrival he engaged in business as a merchant. The Consul General was informed by Mr. Conger, the American Minister, that by virtue of section 4 of the Act of April 30, 1900, the subject of the correspondence was a citizen of the United States unless he had renounced his citizenship; and while reminding the Consul General that an American citizen might acquire a civil or commercial domicile in a

[64]United States v. Wong Kim Ark, 169 U. S. 649, 42 Law Ed. 890.
[65]23 Op. Atty. Gen. 352, 1901.

foreign country without expatriation the registration of the applicant should be granted only after a careful corroboration of facts tending to show that he had not renounced his citizenship. This instruction was approved by Mr. Hay, Secretary of State.[66]

The United States District Court for the Territory of Hawaii is in accord with the views above expressed, holding that the fact that a person was born in Hawaii when it was known as the Kingdom of Hawaii did not change the result;[67] but the same court has held that section 4 does not vest with American citizenship non-resident minor children of a naturalized Hawaiian citizen.[68]

(C.) Porto Rico.

By Article II of the treaty of Paris,[69] proclaimed April 11, 1899, Spain ceded to the United States the Island of Porto Rico and other islands then under the Spanish sovereignty in the West Indies. It was agreed in Article IX that Spanish subjects, natives of the peninsula, residing in the territory over which Spain relinquished her sovereignty, might remain in or remove therefrom; and in case they remained in the territory they might preserve their allegiance to the Spanish crown by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration, they were to be held as having renounced it and as having adopted the nationality of that territory. The civil rights and political status of the native inhabitants of the terri-

[66]Foreign Relations of the United States, 130-132, 1901.

[67]United States v. Ching Tai Sai; United States Ching Tai Sun, Vol. 1, United States District Court of Hawaii 118.

[68]*In re* Koon Ko and Koon Keen, Vol. 3, United States District Court of Hawaii 623. Other Hawaiian cases are cited in connection with the appropriate section of the Chinese exclusion acts, and the existing immigration law.

[69]30 Stat. at L. 1754.

tories thereby ceded to the United States was to be determined by Congress.

By the cession of Porto Rico the allegiance of the inhabitants thereof—with the exception of those who might avail themselves of the opportunity afforded to retain their Spanish allegiance—became due to the United States, which was in possession, and had assumed the government of the country. Thus, the nationality of the island became American instead of Spanish.

On April 12, 1900, Congress passed an act creating a civil government for Porto Rico. Courts were provided for and among other things Porto Rico was made a judicial district. The court was to be designated the District Court of the United States for Porto Rico. Section 7 of the act provided that all inhabitants continuing to reside therein who were Spanish subjects on the 11th day of April, 1899, and then resided in Porto Rico, and their children born subsequent thereto were to be deemed and to be held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as should have elected to preserve their allegiance to the crown of Spain on or before the 11th day of April, 1900, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the 11th day of April, 1899; and they, together with such citizens of the United States as should reside in Porto Rico should constitute a body politic under the name of the People of Porto Rico.

The Act of April 29, 1902, which made the Chinese exclusion laws applicable to the island territory under the jurisdiction of the United States, prohibited the immigration of Chinese laborers to Porto Rico as well as that of Chinese of the exempt classes except as prescribed by the Chinese exclusion acts, and further forbade the immigration of Chinese not citizens of the United States from Porto Rico to the mainland territory of the United States. The present immigration law in its thirty-third section

provides for the enforcement of its provision, as did its predecessor, the Act of March 3, 1903, in all waters, territory and other place subject to the jurisdiction of the United States except the Isthmian Canal Zone. The immigration law is, then, in force in Porto Rico just as it is in the Philippines and Hawaii. But although the Act of April 12, 1900, in designating the political status of such of the residents of the Island of Porto Rico who did not elect to retain their Spanish allegiance, did not confer on them United States citizenship, they are not, nevertheless, to be considered as aliens for the purposes of the immigration law.[70]

4. *Constitutional Power of Congress to Exclude or Expel.*

(A.) In General.

As Congress is visited with exclusive power to regulate the conditions under which aliens may enter or remain in the United States, its enactments restrict the application, to the extent of their provisions, of the general international principle that all aliens admitted into a country enjoy the same civil rights and are on the same footing as the citizens thereof; provided, however, that such provisions are not violative of such guarantees contained in the Federal Constitution as are applicable to aliens subject either to exclusion or expulsion. The exclusion or expulsion of aliens having been made the subject of regulation by the municipal laws of the country, the international principle is to that extent superseded, and their validity can only be brought into question on the ground that they violate basic principles of the fundamental law.

In the great case of United States v. Wong Kim Ark[71] the question presented was whether or not the Chinese exclusion acts could operate to exclude from entry the son

[70]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317; and see 24 Op. Atty. Gen. 40, 1902. The Porto Rican decisions are cited in connection with the appropriate section of the immigration act.

[71]169 U. S. 649, 42 Law Ed. 890.

born to Chinese parents during their residence in this country. The court held that as to him the provisions of the act were wholly without effect, and in the course of its opinion, after discussing the clause of the fourteenth amendment of the Constitution providing that all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside, expressed itself as follows: "The acts of Congress known as the Chinese exclusion acts, the earliest of which was passed some fourteen years after the adoption of the constitutional amendment, cannot control its meaning or impair its effect, but must be construed and executed in subordination to its provisions." And later, "Congress having no power to abridge the rights conferred by the Constitution upon those who have become naturalized citizens by virtue of acts of Congress, *a fortiori* no act or omission of Congress, as to the providing for the naturalization of parents or children of a particular race, can affect citizenship acquired as a birthright, by virtue of the Constitution itself, without any aid of legislation. The fourteenth amendment, while it leaves the power where it was before, in Congress, to regulate naturalization, has conferred no authority upon Congress to restrict the effect of birth, declared by the Constitution to constitute a sufficient and complete right to citizenship."

But while Congress has not the power to pass laws attributing to the concurrence of certain conditions a political effect opposed to that which the Constitution has declared shall result therefrom, as in the case of persons born in the United States, and subject to the jurisdiction thereof, the only measure of the rights to be enjoyed by aliens subject to that jurisdiction consists—for the purposes of the subject under discussion—in Congressional enactments which do not violate the Federal Constitution.

[72]214 U. S. 320, 53 Law Ed. 1013.

"As the authority of Congress," says the court in the Oceanic Navigation case,[72] "over the right to bring aliens into the United States embraces every conceivable aspect of that subject, it must follow that, if Congress has deemed it necessary to impose particular restrictions on the coming in of aliens and to sanction such provisions by penalties enforceable by administrative authority, it follows that the constitutional right of Congress to enact such legislation is the sole measure by which its validity has to be determined by the courts."

Right of Aliens to Invoke Constitutional Guarantees.

Since Congress is vested under the Constitution with the power to legislate with regard to the subject of the exclusion or admission of aliens, the only question which can be raised by the foreigner held for deportation is whether the act under authority of which his deportation is to be accomplished violates any of the provisions of the Constitution applicable to his case. In order to prove his right under the laws of the United States he must show one or both of two things: first, that in being forced to submit to the methods authorized by the act itself he is deprived of rights to which, in his capacity as an alien about to be expelled or excluded from this country, he is entitled under the constitution; second, that the methods employed by the executive officer are not authorized by the provisions of the act.

Reference to the remedies available to the alien in his capacity as the subject of deportation proceedings is made advisedly, since his situation as such is essentially different, from the point of view of remedy, from that of the foreigner residing in this country who seeks to enforce rights the protection of which is guaranteed by recourse to judicial or other proceedings. Aliens as well as citizens residing in the United States are entitled to all the safe-

guards of the Constitution with regard to their rights of person and property, and are subject to every criminal and civil responsibility as long as they are within this country and subject to its jurisdiction.[73] Merely because a person within the jurisdiction of the United States is an alien, and, therefore, one of a class the members of which, under both international law and the Constitution, the state may expel at its pleasure, affords no justification for legislation which would result in depriving him of life, liberty or property without due process of law, or in denying him the right of a jury trial under conditions which the constitutional provision was intended to cover; nor, on that account, would there be any justification in disregarding in the particular case that principle of right and justice, universally accepted in this country, which throws the burden of proof in criminal cases on the state. The reasons why these provisions do not apply in the case of aliens denied the right to enter into or remain in the United States have already been stated; and it seems plain, particularly in view of the fact that the ground for deporting aliens who have already obtained admission is that they have been found to be unlawfully in this country against the specific prohibitions of its laws, that neither the constitutional guarantee against the infliction of unusual punishments, nor that which grants the right to a trial by jury was intended by the framers of the Constitution to apply to proceedings which are not instituted for the punishment of crime, and which do not even constitute a "cause" within the meaning of the revised statutes of the United States.

Unlawful Entry or Presence of Alien Not Punishable Administratively as a Crime.

While it is doubtless within the power of Congress to

[73]Yick Wo v. Hopkins, 118 U. S. 356, 30 Law Ed. 220; Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

provide that the act of entering or remaining in this country in violation of the laws on exclusion or expulsion shall constitute a crime or misdemeanor, any attempt on the part of Congress to impose upon an alien a penalty constituting an infamous punishment as the result of findings reached in purely administrative proceedings would be in contravention of that provision of Article V of the Constitution which alleges that no person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or an indictment of the grand jury, and that no person shall be compelled in any criminal case to be a witness against himself.

The Act of May 5, 1892, provided that Chinese persons and persons of Chinese descent "convicted and adjudged to be not lawfully in the United States" should be imprisoned at hard labor for a period not exceeding one year, and thereafter removed from the United States. In passing upon the constitutionality of this provision the Supreme Court held, in the case of Wong Wing v. United States,[74] that it was within the power of Congress to deport aliens and commit the enforcement of the law to executive officers. "But when Congress sees fit to further promote such a policy by subjecting the persons of such aliens to infamous punishment and hard labor, or by confiscating their property, we think such legislation to be valid, must provide for a judicial trial to establish the guilt of the accused."

Imposition of Administrative Fine Not a Punishment for Crime.

This decision was relied on by the plaintiff in error in the case of Oceanic Steam Navigation Company v. Stranahan,[75] where it was contended that section nine of the Act of March 3, 1903, authorizing the imposition of a money penalty by executive officers on steamship companies bring-

[74] 163 U. S. 230, 41 Law Ed. 140.
[75] 214 U. S. 320, 53 Law Ed. 1013.

ing diseased aliens to ports of the United States was unconstitutional because it defined a criminal offense and authorized a purely administrative official to determine whether the crime had been committed, and if so, to inflict punishment. But in answer to this contention it was pointed out by the court that the principles announced in the Wong Wing case—that the trial and punishment for an infamous offense was not an administrative function—was "wholly inappropriate to this case since on the face of the section which authorized the Secretary of Commerce and Labor to impose the exaction which is complained of, it is apparent that it does not purport to define and punish an infamous crime, or, indeed, any criminal offense whatsoever." It was further objected, however, that granting the power of Congress to impose penalties for the violation of a statutory duty and to provide for their enforcement by civil process it did not follow that the collection of a money penalty could be committed to administrative officers without having recourse to the courts.

"But," said the court, "the proposition magnifies the judicial to the detriment of all other departments of the Government, disregarding many previous adjudications of this court, and ignores practices often manifested and hitherto deemed to be free from any possible constitutional question."

Unlawful Return of Deported Alien Made a Criminal Offense by the Act of March 26, 1910.

By section 3 of the present act, as amended by the Act of March 26, 1910, it is provided that "any alien who shall after he has been debarred or deported in pursuance of the provisions of this section attempt thereafter to return to or enter the United States shall be deemed guilty of a misdemeanor and shall be imprisoned for not more than two years." The result of this legislation is to create a new crime for which the accused must be indicted and tried in regular criminal proceedings, as is done in all other

criminal cases, whether or not based on the violations of the immigration laws.

Deportation Not a Punishment for Crime.

The alien seeking admission into the United States and who is denied the right to enter on account of being afflicted with disabilities, the existence of which imposes on the appropriate officers the duty to exclude him under the immigration laws; the alien who, after having obtained in some way admission to the United States is, during the statutory period within which he may be deported according to the provisions of the immigration act, arrested and ordered to be deported; and the alien of the Chinese laboring class specifically excluded by the Chinese exclusion laws, whether denied admission upon entering or being found to be unlawfully therein and ordered deported, all occupy in law a position *sui generis,* in that their deportation is not inflicted as a punishment for crime committed by them or indeed for any offense or misdemeanor of any kind. The order of deportation "is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the Government of the Nation, acting within its constitutional authority and through the proper departments, has determined that his continuing to reside here shall depend."[76]

Inapplicability of Constitutional Guarantees to the Subjects of Deportation Proceedings.

In the case just cited, the Supreme Court affirmed the constitutionality of the Chinese exclusion Act of May 6, 1892, and under it directed the deportation of a Chinese laborer who was arrested without process, was heard before a United States judge without a jury on the question of his right to remain in the United States, and, on failure to prove that right in the manner prescribed by statute,

[76]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

was ordered deported by the district judge. The effect of this decision was to settle conclusively that the constitutional guarantee of the right to a jury trial did not apply to a judicial hearing to determine the right of an alien to remain in the United States, that deportation under such conditions was not a punishment, and that, therefore, the constitutional provision against cruel and unusual punishments did not apply; and finally, that the principle that the burden of proof lies with the state in criminal cases does not apply to deportation proceedings, as they do not constitute a trial and do not contain room for a finding involving a criminal charge.

If these guarantees cannot be invoked by aliens resident in the United States arrested in deportation proceedings it follows, a *fortiori,* that the alien stopped at the border and detained in his attempt to enter this country has still less reason to attempt to rely upon them. In the case of Turner v. Williams, in which an alien attempting to enter the United States was detained and held for deportation under the Act of March 3, 1903,[77] it was held that the constitutional privilege guaranteeing the freedom of speech, worship or petition had no application to those who, far from being recognized residents of the United States, with a claim on the protection of this country, and owing in return therefor a temporary allegiance, were stopped at its borders for the reason that they belonged to a class to whom this country by specific legislation refused to extend its protection, and whose allegiance it did not choose to accept.

(B.) Power of Congress to Vest Final Determination of Right of Aliens to Enter or Remain in Executive Officers.

(1.) Of the Right to Enter or Remain for Residential Purposes.

[77] *Ante,* p. 78.

The power of Congress not only to exclude or expel aliens from the country or to permit them to enter only on the conditions which it prescribes, but to vest the final determination in executive officers of the right of any alien to enter, has been asserted and sustained for the past twenty years by the highest tribunal of the land.

The existence of this power was at first vigorously attacked; it was contended that to detain an alien under these conditions and to hold him for deportation was to deprive him of his liberty without due process of law. But this view has not been accepted by the courts. "Congress may," said MR. JUSTICE GRAY, speaking for the Supreme Court in the case of Ekiu v. United States,[78] "..... authorize the courts to investigate and ascertain the facts on which the right to land depends. But, on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case, as in all others, in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to reexamine or controvert the sufficiency of the evidence on which he acted..... It is not within the province of the judiciary to order that foreigners who have never been naturalized nor acquired any domicile or residence within the United States, nor even been admitted into the country pursuant to law, shall be permitted to enter, in opposition to the constitutional and lawful measures of the legislative and executive branches of the National Government. As to such persons the decisions of executive or administrative officers acting within powers expressly conferred by Congress, are due process of law."

The facts presented in the above case involved the detention for deportation of an alien stopped at the border on a finding by the immigration inspector that she was likely

[78] 142 U. S. 651, 35 Law Ed. 1146.

to become a public charge, and was as such not entitled to enter under the Act of March 3, 1891. The case of Fong Yue Ting v. United States,[79] decided in 1893, two years later, involved the right of the government to deport Chinese laborers already in this country who had failed to procure the registration certificate prescribed by the Act of May 5, 1892. There the court reaffirmed the power of Congress to expel or exclude from the country aliens or any specified class of aliens, and held that the power might be exercised entirely through executive officers.[80] Finally, in the case of Lem Moon Sing v. United States,[81] the court held that the authority of Congress to pass the Act of 1894, which made the decision of executive officers denying a Chinese person admission irrespective of whether or not he might be entitled to enter under existing treaties with China, conclusive and binding on the courts, could not be denied.

(2). Of the Right to Regulate the Admission of Aliens for Purposes of Transit.

The power of Congress to determine the conditions under which aliens may enter the country or to confer upon executive officers the power to provide regulations governing their admission or exclusion for the purpose of carrying into effect the provisions of the acts relative thereto is not restricted to cases where admission is sought for the purpose of establishing domicile. It is the fact of physical entrance by the alien within the jurisdiction, irrespective of whether that purpose is for domicile or transit which is within the power of Congress to grant, deny or regulate.

"The doctrine is firmly established," says the court in the case of Fok Young Yo v. United States,[82] "that the power to exclude or expel aliens is vested in the political depart-

[79]149 U. S. 698, 37 Law Ed. 905.
[80]pp. 713 and 714, *ibid.*
[81]158 U. S. 538, 39 Law Ed. 1082.
[82]185 U. S. 296, 46 Law Ed. 917.

ments of the Government to be regulated by treaty or by act of Congress and to be executed by the executive authority according to such regulations, except so far as the judicial department is authorized by treaty or by statute or is required by the Constitution to intervene. As a general proposition this must be true of the privilege of transit..... In short, the privilege of transit, although it is one that should not be withheld without good cause, is nevertheless conceded only on such terms as the particular government prescribes in view of the well-being of its own people..... Congressional action has placed the final determination of the right of admission in executive officers without judicial intervention, and this has been for many years the recognized and declared policy of the country. The regulations to prevent the abuse of the privilege of transit have been and are enacted to effectuate the same policy, and recourse to the courts by *habeas corpus* to determine the existence of such abuse appears to us equally inadmissible."

(C.) Necessity for a Fair Hearing.

But, although Congress has the power to entrust the consideration of all questions respecting the admission and exclusion of aliens to administrative officers and to make their word final with regard to all questions of fact on which the right to enter is based, there are limits within which those officers must remain in order to make exclusion of aliens by them a legal act sanctioned not only by the modern practice of civilized nations but by the fundamental principles on which the national Constitution is based. Under our system of government and jurisprudence there is no room for arbitrary action. In the Japanese Immigrant case,[83] the court expressed itself as follows: "This court has never held, nor must we now be understood as holding that administrative officers when executing the provisions of the statute involving the liberty of persons,

[83] 189 U. S. 86, 47 Law Ed. 721.

may disregard the fundamental principles that inhere in due process of law as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity at some time to be heard before such officers in respect to the matters upon which that liberty depends—not necessarily an opportunity upon a regular set occasion and according to the forms of judicial procedure, but one that will secure the prompt and vigorous action contemplated by Congress and at the same time be appropriate to the nature of the case upon which such officers are required to act. Therefore it is not competent for the Secretary of the Treasury or any executive officer, at any time within the year limited by the statute arbitrarily to cause an alien who has entered the country and who has become subject in all respects to its jurisdiction and a part of its population although alleged to be illegally here, to be taken into custody and deported without giving him an opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized."

The principles above set forth were applied in the cases cited to the situation where the question raised was that of the right of the alien to remain in the country. They are equally applicable to aliens, who, not having been admitted to the United States are detained for deportation by executive officers. It is true that in the case cited the court, in another portion of the decision, uses language which seems to indicate some doubt as to whether or not an alien who has never entered the United States has the right to invoke the guarantee of due process of law contained in the fifth amendment to the Constitution. It is also true that in such a case, the position of the alien for certain purposes is as if he had never entered the country; and it was stated in the case of Turner v. Williams,[84] that an alien stopped at

[84] 194 U. S. 279, 48 Law Ed. 979.

the border and detained there by immigration officers does not become thereby one of the persons to whom certain constitutional guarantees apply. But it is to be noted that this language was used with specific reference to the capacity of the alien so situated to invoke certain specific guarantees in his behalf, namely, that of the freedom of speech, worship and petition. In the case of Chin Yow v. United States,[85] the facts presented were those of a Chinese person who, on seeking to enter the United States, was refused admission by executive officers, and was further prevented by them, as stated in the petition filed by him, requesting the issuance of a writ of *habeas corpus,* from obtaining and presenting evidence whereby his right to enter might have been shown. The Supreme Court held that the writ, which was denied by the district court, should have been granted on the facts alleged in the petition. It was set out therein that the petitioner had been denied the opportunity of presenting his proof; in other words, that he had been denied a fair hearing. This was not denied by the government. The result of this decision would seem to be that the language used by the Supreme Court in the Japanese Immigrant case, (Yamataya v. Fisher),[86] is applicable to all aliens, irrespective of whether the administrative proceedings raise the question of their right to enter or to remain in this country. The Act of Congress under which the executive officers proceeded was constitutional, and the mode of procedure prescribed unquestionably constituted due process of law; but the arbitrary refusal on the part of the officers to permit the petitioner to present what proofs he had, or which might be within his reach, followed by his detention for deportation, was such as was never contemplated by Congress, and plainly beyond the limits of departmental authority. It follows that if the employment of arbitrary methods is in itself sufficient to constitute a denial of due process any

[85] 208 U. S. 8, 52 Law Ed. 369.
[86] *Ante,* p. 138.

act of Congress which should prescribe methods in themselves arbitrary would come equally within the constitutional prohibition.

In view of the foregoing decisions it may be said to be conclusively settled that the only ground on which an alien seeking admission into the United States under any law or treaty is entitled to have his right to do so adjudicated by the courts is (1) that the act of Congress under which he is excluded does not provide that he be given a fair hearing, or (2) that during the proceedings against him taken under the act he has been denied an opportunity to be heard; and that this is equally true with regard to foreigners who have already entered the country and whose right to remain is denied by executive officers. In either case the alien is at liberty to invoke the protection of the Federal Constitution against such an apparent disregard of the fundamental principles that inhere in due process of law.

Statutory Limitation of Evidence Available at Administrative Hearing Does Not Constitute the Denial of a Hearing as to the Right Claimed.

It seems, however, that the claim that there has been no fair hearing cannot be successfully rested on a showing that the evidence taken by executive officers was on certain points only, where the law itself limits the amount or kind of evidence that may be presented, or when the existence of a certain state of facts is made by statute to constitute of itself sufficient evidence to place responsibility for a violation of the immigration acts. The right of Congress to prescribe what evidence shall be admitted, or what shall be required in deportation proceedings from an alien seeking either to enter or remain in the United States, is not open to controversy. As instances of such legislation we have the provisions in the Act of 1882, as amended by that of 1884, and those of the Act of 1888 providing that the "section 6" certificates issued to merchants, and the return

certificates issued to Chinese shall constitute the sole evidence on which the former may enter or the latter return to the United States; and besides these the provisions of the Acts of 1892 and 1893 whereby Congress provided that the absence of the certificate of residence throws upon Chinese laborers in the United States the burden of proving that their presence in this country is legal, and of proving it by at least one credible witness other than Chinese; or again, the special facts to be established in order to enable Chinese persons claiming a prior mercantile domicile in the United States to re-enter the country, as provided by the Act of November 3, 1893.

The Act of March 3, 1903, as well as the present act in force provides for the infliction of a penalty in the form of a fine upon transportation companies bringing diseased aliens to ports in the United States, if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien thus brought was afflicted with such disease at the time of foreign embarkation, and that the existence thereof might have been detected by means of a competent medical examination at the time. In the case of the Oceanic Steam Navigation Company v. Stranahan,[88] it was contended that this provision, in connection with the regulations made for its enforcement by the Secretary of Commerce and Labor, the result of which was in effect to make the finding of the particular medical officer at the port of arrival final as to the question whether the disease existed, and could have been detected at the foreign port of embarkation, was to deprive the steamship company of the amount of that fine without a hearing. The court, speaking through MR. JUSTICE WHITE, remarks that by this section[89] "the statute unambiguously excludes the conception that the steamship company was entitled to be heard in the sense of raising an issue and tendering evidence concerning the condition of the alien immigrant upon arrival at

[88]214 U. S. 320, 53 Law Ed. 1013.

[89]Section 9, Act of February 20, 1907.

the port of disembarkation, as the plain purpose of the statute was to exclusively commit that subject to the medical officers for which the statute provided."

The right to a hearing can mean no more and no less than the right to be heard on such matters as the law provides shall be presented to administrative officers. If the right to be heard can be said to be denied merely because the right to produce evidence concerning certain points is denied, then every Chinese person who has attempted to enter the United States without the certificate provided by law, and has been returned on that ground, has been denied a hearing. Such an interpretation of the term "hearing" denies the right of Congress to prescribe and limit the evidence which shall be received by judicial or executive officers, which is manifestly absurd. It seems, moreover, apparent that the decision rendered by the medical officer, involving as it necessarily does a thorough examination of the diseased alien, constitutes the most complete kind of a hearing permitted by law, in that it involves a full consideration by such officer of the only evidence on which he is required by law to pass in order to reach his final determination. But in the absence of such examination by the medical officer, the absence of a fair hearing could be successfully urged.

In sustaining section 9 the court stated further that, as Congress has the undoubted power to forbid altogether the introduction of diseased aliens and to impose a penalty on the vessel actually bringing them in, "it must then follow that the provision contained in the statute is, of course, valid, since it only subjects the vessel to the exaction when.....it appears that the alien immigrant afflicted.....is in such a state of the disease that it must .....have.....been susceptible of discovery at the port of embarkation."

While the result of the case was to hold that Congress was acting wholly within its powers in making the result

of the medical examination conclusive for the purpose of imposing the penalty in question, the court was careful to add that, in reaching this conclusion, it had not considsidered the questions which would arise for decision if the case presented an attempt to endow administrative officers with the power to enforce a lawful exaction by methods which were not within the competency of the administrative duties, because they required the exercise of judicial authority.

(D.) Classes Generally Exempted from the Exercise of the Power.

The principle has been more than once affirmed in the course of this chapter[90] that when a state invites the citizens or subjects of other powers to enter its dominions, such invitation contains an implied guarantee to equal protection with regard to civil rights, as distinguished from rights purely political, with those extended to its own citizens residing within its territory; but that this principle is recognized only in connection with the additional proviso that, the state having the right to limit or restrict the conditions under which aliens may enter or reside therein, the alien availing himself of the opportunity thus offered cannot complain if he is subjected to the operation of such provisions, even though their effect is to deprive him or limit him with respect to certain civil rights enjoyed by the rest of the community. The only limitation fixed by international law, is, as has already been pointed out, that the municipal regulations shall not be of such a nature as to violate the recognized principals governing the conduct of civilized nations. We have seen that Congress in the exercise of its sovereign right to legislate concerning aliens, has imposed strict conditions upon the right of certain classes of aliens to enter and remain in the United States, and has excluded other aliens altogether; and that

[90] *Ante*, pp. 10, 14.

the result of the decisions of the Supreme Court of the United States and of the lower Federal courts is to the effect that owing to the peculiar position occupied by aliens in the course of their subjection to deportation proceedings brought against them either for the purpose of exclusion or expulsion, the courts will intervene on their behalf only when the provisions of the acts of Congress sought to be executed against them violate some fundamental principle of the Constitution of the United States, or when the acts of executive officers, committed under color of the exclusion or immigration laws, deprive them of some fundamental right to which, through the mere fact of their being within the territorial limits of the United States, they are held to be entitled.

It has been pointed out that in the discussion of this question whatever rights aliens can claim depend absolutely upon the provisions of the acts of Congress passed with regard to them, and the validity of such acts depends in turn on whether or not they are in accord with such provisions of the Constitution as apply to aliens subjected to deportation proceedings. But the question has occasionally arisen as to whether or not the immigration and exclusion acts apply to certain persons or classes of persons seeking to enter the United States or to remain therein; and this question once presented, is one which goes squarely to the jurisdiction of the executive officer to deport; with the important limitation however, that before the question of jurisdiction can arise those officers must have passed definitely, not on the legal effect of the status of the alien presenting himself for admission but on the facts on which their finding is based and which, taken altogether, may be said to constitute the alien's status under the law. Of course, should it develop that the person seeking admission is found by the administrative officers to be a citizen of the United States or to be for some other reason without the operation of the act in question, it may be said that, in their capacity as officers to examine and investi-

gate the right of *aliens* to enter the United States they never had any jurisdiction whatever over the applicant. At the same time it must be admitted that some authority must exist somewhere for the purpose of determining whether or not a person presenting himself for admission is subject to deportation; and the position of executive officers in such cases would seem to be analogous to that of a judge of limited jurisdiction, who, when a person is brought before him charged with an offense, has authority over the person of the accused for the purpose of determining whether or not the offense alleged in the charges made against him comes within his jurisdiction.

The Act of August 18, 1894,[91] provided that any alien excluded from admission into the United States by the proper executive officer under any law or treaty of the United States should not be allowed to appeal to the courts from that decision. In the case of Lem Moon Sing,[92] decided after the passage of that act, the Supreme Court held that although a Chinese alien might have the right to enter the United States under either the Chinese exclusion acts or the treaty of the United States with China, the excluding decision of the appropriate executive officer was final and binding on the court, and refused the applicant's petition for the issuance of a writ of *habeas corpus* in his behalf. Granting that the petitioner was, as alleged in the petition, a Chinese merchant, and as such entitled to enter the United States, under both the treaty with China and the Chinese exclusion acts, and granting further that in the exercise of this right secured by treaty and by acts of Congress he had been permitted to enter the United States and acquired a commercial domicile here—granting all this, the fact remains that in his absence Congress passed an act which specifically included those of his class within its provisions; in other words, this country exercised its right of enacting municipal legislation governing

[91] 28 Stat. at L. *ante*, p. 390.
[92] 158 U. S. 534, 39 Law Ed. 1082.

the admission or exclusion of aliens. Under these conditions the petitioner could not be heard to allege that he had a right to return in violation of such legislation. This case has been repeatedly cited as an authority for holding that the immigration Acts of 1903 and 1907 included within the scope of their operation not only alien immigrants coming to the United States for the first time, but those who have lawfully acquired a domicile in this country, left it temporarily *animo revertendi* and again returned to their domicile in the United States. There is considerable conflict of judicial opinion upon this point.[93]

No Chinese person can enter the United States except by virtue of the treaties with China and of the provisions of the Chinese exclusion acts. There was in that case and there could be, no question but that those acts and treaties applied to the petitioner. On the other hand there is very grave doubt as to whether or not the present immigration act includes in its provisions foreigners who have acquired, maintained and continue to maintain a lawful domicile in this country. It is sufficient to say that if the present act is applicable to all aliens irrespective of whether or not they have established and maintained a lawful domicile here, the decision in the Lem Moon Sing case is in point; but if, on the other hand, such aliens do not come within the operation of the immigration acts, the case has no application. It is true that it is authoritative on the point that the mere fact of the establishment by an alien of a lawful domicile in this country gives him no more right to remain here in the face of an act of Congress directly or by necessary implication revoking the rights thus enjoyed than if he had never acquired them; but it does not go to the extent of holding that these rights may be lost in the absence of municipal legislation which works their revocation.

The finality of the excluding decision of the executive

[93]See *post*, pp. 435 *et seq.*

officers is wholly dependent upon whether the alien thus excluded is seeking admission into the United States under any law or treaty; and in the case of Chinese persons at least, this question is decided by the mere finding of fact on the part of the officer that the applicant is in fact of Chinese nationality, simply because no Chinese person can enter *as such* except under such law or treaty.[94] The question of whether a person is an alien is generally one of fact for the executive department; but the question of whether or not a person is an alien within the meaning of the immigration acts is a question of law,[95] as is the question whether all aliens come within the operation of the immigration acts.[96]

But since an examination of the question as to what aliens or classes of aliens come within the provisions of the immigration acts involves a consideration of their status under those laws rather than that of the power of Congress to provide for their exclusion or expulsion, the subject is left to a subsequent chapter.[97]

[94] Where, however, a Chinese person is excluded, not because he is seeking to enter under any law or treaty applicable to Chinese, but merely because, as an alien, he is held to be excludable under the immigration acts, the question of domicile may well be material. Of course if the department should find, as a matter of fact that he is not settled here his claim to enter as a domiciled alien must fall. Such was the administrative finding in the Lem Moon Sing case. But if he is found to be domiciled here and is excluded on the ground that the immigration acts apply to all aliens irrespective of whether or not they have acquired a domicile here the departmental action, based as it would then be on a construction of law, might, it seems, be open to judicial review.

[95] Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

[96] Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

[97] Chapter on "Status," *post*, p. 321.

CHAPTER II.

THE EXISTING IMMIGRATION LAW.

The Act of February 20, 1907,[1] as Amended by the Act of March 26, 1910.[2]

The Act of February 20 is entitled "An act to regulate the immigration of aliens into the United States," and it may safely be said that its primary purpose is to prevent the unrestricted immigration of any and all aliens into the country. Yet it does not follow that its provisions apply only to such persons as leave their native country for the United States for the purpose of making the latter their home. This is made evident by various provisions where the ground of exclusion is so obviously based on the personal characteristics, or moral, physical or mental defects of the individual seeking admission into this country that there is left no room for argument or doubt as to the reason of his exclusion; and by the further fact that other provisions are operative on members of certain classes who have already entered and have lawfully established their residence here, and who, therefore, cannot be properly classified as immigrants when returning to the United States to resume that residence.

On the other hand, it must be borne in mind that every alien who comes to this country is not an immigrant, and that in this connection the title of the Act must be held to be of some significance—although not of such weight as to give it precedence over specific provisions of the act, or over its general intent and meaning construed in the light of its provisions as a whole. It follows that disabilities which would operate to exclude foreign immigrants, or aliens coming to the United States for the first time, would not seem to be applicable to aliens domiciled in this country who return from a trip abroad, provided that the latter

[1] 34 Stat. at L. 898.
[2] 36 Stat. at L. 263.

are not specifically prohibited from continuing to reside here, and hence from returning after departure. The right of resident aliens to return to this country after a temporary absence will be considered at length in a subsequent chapter.[3]

It may be stated as a general proposition that in so far as the provisions of the act apply to aliens not excluded, but who on the contrary have been allowed to enter the United States, these provisions must be held to apply to all such aliens, whether immigrants or otherwise, except such as are excepted from their operation either by the express provisions of the act itself, or by implication consonant with the accepted maxims of statutory construction.

The aliens subject to the operation of the act may be generally classified as follows:

Those who are excluded absolutely, because of some physical, mental, or moral disability, which, under the act, precludes their lawful entry into the United States, irrespective of whether their intended stay in this country is temporary or permanent;

Those suffering from some physical disability who may nevertheless be admitted conditionally in the discretion of the Secretary of Commerce and Labor on giving bond;

Those who, after having been permitted to enter, shall within three years after the date of such entry become public charges from causes which existed prior to such landing, those who shall within that period have been found by the Secretary of Commerce and Labor to be unlawfully here, or those, who, being within the United States, may at any time after entry and for certain specified causes be deemed to be unlawfully in the United States;

Aliens coming to the United States other than those designated in the three preceding classes.

Accredited officials of foreign governments, their suites,

[3] *Post*, p. 427, Chapter on "Status."

families and guests are not subject to the provisions of the act.[4]

Section 1. That there shall be levied, collected, and paid a tax of four dollars for every alien entering in the United States. The said tax shall be paid to the collector of customs of the port or customs district to which said alien shall come, or, if there be no collector at such port or district, then to the collector nearest thereto, by the master, agent, owner or consignee of the vessel, transportation line, or other conveyance or vehicle bringing such alien to the United States. The money thus collected, together with all fines and rentals collected under the laws regulating the immigration of aliens into the United States, shall be paid into the Treasury of the United States, and shall constitute a permanent appropriation to be called the "immigrant fund," to be used under the direction of the Secretary of Commerce and Labor to defray the expense of regulating the immigration of aliens into the United States under said laws, including the contract labor laws, the cost of reports of decisions of the Federal courts, and digest thereof, for the use of the Commissioner General of Immigration, and the salaries and expenses of all officers, clerks and employees appointed to enforce said laws. The tax imposed by this section shall be a lien upon the vessel, or other vehicle of carriage or transportation bringing such aliens to the United States, and shall be a debt in favor of the United States against the owner or owners of such vessel, or other vehicle, and the payment of such tax may be enforced by any legal or equitable remedy. That the said tax shall not be levied upon aliens who shall enter the United States after an uninterrupted residence of at least one year, immediately preceding such entrance, in the Dominion of Canada, Newfoundland, the Republic of Cuba, or the Republic of Mexico, nor upon otherwise admissible residents of any possession of the United States, nor upon aliens in transit through the United States, nor upon aliens who have been lawfully admitted

[4]Considerable light regarding the meaning and intent of this and previous acts may be obtained from the reports of the Senate and House committees on the measures proposed and adopted.

to the United States and who later shall go in transit from one part of the United States to another through foreign contiguous territory: *Provided,* That the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Commerce and Labor, by agreement with transportation lines, as provided in section thirty-two of this act, may arrange in some other manner for the payment of the tax imposed by this section upon any or all aliens seeking admission from foreign contiguous territory: *Provided further,* That if in any fiscal year the amount of money collected under the provisions of this section shall exceed two million five hundred thousand dollars, the excess above that amount shall not be added to the "immigrant fund:" *Provided further,* That the provisions of this section shall not apply to aliens arriving in Guam, Porto Rico, or Hawaii; but if any such alien, not having become a citizen of the United States, shall later arrive at any port or place of the United States on the North American Continent the provisions of this section shall apply: *Provided further,* That whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, the President may refuse to permit such citizens of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular possessions or from the Canal Zone.

The Head Tax.

Levy and Collection of Head Tax.

Section 1 of the act provides that there shall be levied, collected and paid a tax of four dollars for every alien entering the United States. By the same section the Commissioner General of Immigration is authorized, under the direction or with the approval of the Secretary of Commerce and Labor, to arrange for the payment of the tax imposed upon any or all aliens seeking admission from

foreign contiguous territory, by agreement with transportation lines, as provided in section 32 of the act. Section 32 sets out that the Commissioner General shall prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico so as not to unnecessarily delay, impede, or annoy passengers in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for this purpose. Acting in the exercise of these powers the Commissioner General of Immigration has entered into an agreement with the various steamship and railroad companies in the Dominion of Canada, embodied in Rule 12[5] of the Immigration rules. In subdivision 3 of said rule, it is provided that the masters, owners, or agents of vessels bringing aliens to Canadian ports bound for the United States shall pay to the United States Commissioner of Immigration for Canada the sum of four dollars for each and every alien brought to a Canadian port bound for the United States, provided that no head tax shall be levied against or collected from Canadian steamship lines on aliens brought to Canada bound for the United States who are shown to belong to any one of the excluded classes and returned to the country whence they came.

Under Rule 13[6] provision is made for the collection of the head tax on the Mexican border.

The right to demand payment of a head tax on account of aliens was upheld and unqualifiedly affirmed in the group of cases headed by that of Edye v. Robinson,[7] known as the Head Money Cases, where the collection thereof was assailed on constitutional grounds. The tax prescribed by section 1 of the Act of August 3, 1882, at the rate of fifty cents for each alien passenger, and later raised to one dollar by the Sundry Civil Appropriation Act of August

[5]This rule is quoted in full in connection with the discussion of section 32 of this act, *post*, p. 300.

[6]See *Post*, p. 305.

[7]112 U. S. 580, 28 Law. Ed. 798.

18, 1894, was upheld on the ground that "in the exercise of its power to regulate immigration and in the very act of exercising that power it was competent for Congress to impose this contribution on the ship owners engaged in the business;" and to the objection that the effect of the tax compelled the ultimate payment of the sum demanded for each passenger by that passenger himself, the court said "it is enough to say that Congress having the power to pass a law regulating immigration as a part of the commerce of this country with foreign nations, we see nothing in the statute by which it has here exercised that power forbidden by any other part of the Constitution."

The amount of the head tax imposed by the Act of August 18, 1894, was doubled by the Act of March 3, 1903, and this was in turn doubled, so that, as will be seen by reference to section 1 of the present act, the amount of the head tax is four dollars.

To Whom Paid.

Section 1 of the act provides that the tax shall be paid to the collector of customs of the port or customs district to which the alien shall come, or, in the absence of such collector at the port or district, then to the collector nearest thereto. Under the Canadian agreement[8] payment of the head tax is required to be made to the United States Commissioner of Immigration for Canada.

By Whom Paid.

The tax must be paid by the master, agent, owner or consignee of the vessel, transportation line or other conveyance or vehicle bringing the alien to the United States. Under the Canadian Agreement, it must be paid by the master, owner, or agent of vessels bringing aliens to Canadian ports bound for the United States.[9] At the Mex-

[8]Rule 12.

[9]Rule 12, subdivision 3.

ican border the amount of the head tax must be paid by the transportation or bridge company bringing the alien to the border ports;[10] in the case of taxable aliens who cross the border by other than regular (bridges or rail) transportation, the payment must be paid by the alien himself if he is found eligible to enter.

Disposition of Sums Collected by Way of Head Tax.

The act provides that the money thus collected, together with all fines and rentals collected under the laws regulating the immigration of aliens, shall be paid into the Treasury of the United States and constitute a permanent appropriation to be called the immigration fund. This provision has, however, been repealed by the Act of March 4, 1909,[11] which provides that on July 1, 1909, all the head tax fines and rentals collected under this act shall be covered into the treasury to the credit of miscellaneous receipts.

The Tax a Lien.

The head tax imposed by the Act of August 3, 1882, was held by the Attorney General to constitute a lien upon the vessel as well as a debt against the owner thereof.[12] The present act provides that the tax shall be a lien upon the vessel or other vehicle of carriage or transportation bringing aliens into the United States, and shall also constitute a debt in favor of the Untied States against the owner or owners of such vessel or other vehicle, and that the payment of the tax may be enforced by any legal or equitable remedy.

Persons on Whose Account the Tax May be Levied.

These persons are stated at the outset of section 1 of the act to be every alien entering the United States. This sweeping classification is, however, greatly modified by

[10]Rule 13, subdivision 2.
[11]35 Stats. 981.
[12]19 Op. Atty. Gen. 660.

the exceptions later stated in the section, the first of which applies to aliens who shall enter the United States after an uninterrupted residence of at least one year in Canada, Newfoundland, Cuba, or Mexico. The Department of Commerce and Labor has construed the words "uninterrupted residence of at least one year immediately preceding such entrance" to mean a *bona fide* residence and legal domicile and not necessarily actual physical residence.

Rule 1[13] provides that, among others, the following aliens shall be exempt from the payment of the head tax:

Aliens entering the United States from Canada, Newfoundland, Cuba, or Mexico, whose legal domicile or *bona fide* residence was in one of these countries for at least one year immediately preceding such entry. This exemption shall not be lost merely by reason of temporary absences of short duration therefrom, nor merely because instead of entering the United States from Canada, Newfoundland, Cuba, or Mexico, the aliens come by way of some other foreign country in which they had sojourned temporarily.

Aliens re-entering the United States from Canada, Newfoundland, Cuba, or Mexico, who are citizens thereof but who have acquired a legal domicile or *bona fide* residence in the United States, and who are returning from a visit from one of the said countries, notwithstanding the period of a full year has not intervened between the date of their departure and the date of their return to the United States.

This provision indicates that in the opinion of the Department aliens lawfully residing in the United States other than citizens of the four countries must, on returning to their home from a visit abroad, be subjected to the payment of the tax. This view would seem to be based on the construction of the Attorney General of the Act of August 3, 1882, to the effect that the fifty cents duty provided by that act was collectible on account of all itinerant

[13]Subdivision 3.

[14]18 Op. Atty. Gen. 185, 196, 1885.

persons, not citizens of the United States, coming to the ports of this country from foreign ports, and was demandable as often as such persons should enter.[14]

The question as to whether or not aliens resident in the United States are, under the present act, liable to the payment of a head tax on returning home from a visit abroad has as yet never arisen for judicial determination, although on the question as to whether such aliens are generally subject to the provision of this or previous acts there has been and still is, a decided conflict of judicial opinion. This subject is considered in a later chapter.[15]

The act provides that the tax shall not be levied on admissible residents of any possession of the United States. If the term "possession" includes the continental territory of the United States—and there seems to be no good reason why it should not be so considered—the question is not debatable. If, on the other hand, the term "possession" refers to the extra-continental territory of this country no good reason would seem to exist for supposing that by the use of the term in that restricted sense Congress meant to exclude residents of the North American Continent from exemption. It is the fact of residence in the United States jurisdiction which gives rise to the exemption in such cases; the fact of residence in Canada, Mexico, Cuba and Newfoundland which would appear to exempt residents of any one of these dominions; and it would surely be a strange construction of the statute which would impose on residents of the continental territory of this country burdens from which inhabitants of its dependencies, not to mention those of foreign jurisdictions, are relieved by the fact of residence alone.

As shown above admissible residents of any possession of the United States are exempt under Section 1 from the payment of the tax. Yet in Rule 1[16] it is provided that the exemption can be claimed only on behalf of "aliens, other-

[15] *Post*, p. 427.

[16] Subdivision (d).

wise admissible, who are residents of any possession of the United States and who at the time of admission to such possession paid head tax." While it is true that the departmental rules have the force and effect of law when not inconsistent with the acts which they are intended to enforce, or with the Constitution or existing treaties,[17] this general principle cannot be said to be applicable to a case like the present where the department attaches conditions to an exemption to which the act creating it attaches none. It would seem to follow, therefore, that an alien who has entered and become a resident of any of the extra-continental possessions of the United States would not be subject on a visit to the United States to the payment of the head tax here, irrespective of whether or not he has paid the head tax required by the jurisdiction in which he is domiciled. Citizens of the Philippines have been held not to be subject to the payment of the tax provided by the Act of March 3, 1903.[18]

Aliens in Transit Through the United States

are exempt from the payment of the tax by the terms of section 1. Rule 1 contains the following provision:

"Upon the arrival of aliens at a seaport of the United States or at any designated port of entry on the Mexican border, the immigration officer therein charged shall certify to the collector of customs the number of such aliens other than those described in subdivision 3 hereof, together with the name of the transportation agent or other person responsible for the payment of head tax due in respect of them, and shall specify (1) how many of the said aliens have been held for special inquiry, and (2) how many claim to enter for the purpose of transit through the United States. Thereupon the collector of customs shall forthwith collect a tax of four dollars for each alien so certified.

Collections pertaining to classes of aliens (1) and (2)

[17] *Ex parte* Chow Chok, 161 Fed. 627.
[18] 25 Op. Atty. Gen. 131, 1904.

above referred to shall be held in a special deposit, to be refunded as to such of the former as are deported and as to such of the latter as are promptly shown to the satisfaction of said immigration officer, and in any event within sixty days of the time of entry, to have left the United States within thirty days of the time of entry. Collections not so refunded shall be accounted for in the regular manner and covered into the treasury. Where proof of departure is not submitted until after sixty days of the time of entry the case shall be reported to the bureau. No application for refund of head tax erroneously collected shall be considered by the Bureau if presented after sixty days from the time of entry unless satisfactory reason for the delay is shown in writing."

At first sight this rule would appeal to contradict the provisions of the act; but whether there is a contradiction in fact depends upon whether or not the law authorizes the collection of the amount of four dollars as the collection of the tax itself, or merely of the amount of the tax to be deposited and subsequently refunded on a showing that the alien has left the country. Although the rules frequently make use of the terms "refund of head tax" and "payment of deposit of head tax," they also refer to the deposit "of the amount of the head tax," the facts to which these different terms have reference being identical, to wit, the deposit required from an alien averring the intention to pass in transit through the United States in order to guarantee the payment of the head tax in case the alien's purpose is not to pass through and out of the country, but to make it his home. There can be no question of the right of the Department to require a deposit of the amount of the tax. Under the regulations of September 28, 1889, a bond in the penal sum of $200.00 was required for each Chinese laborer claiming to be in transit through the territory of the United States, conditioned on his transit and actual departure within a reasonable time; by the regulations of December 8, 1900, the bond was not allowed to be less than

$500.00. These regulations were unqualifiedly approved by the Supreme Court in the case of Fok Yong Yo v. United States.[19]

A provision in substance the same as that contained in the rule above quoted appeared in Rule 15 of the regulations adopted for the purpose of carrying into effect the provisions of the Act of 1903, and it was held valid in the case of Stratton v. Oceanic Steamship Company.[20] The dissent in that case was based on the ground that the effect of the regulation was to impose the head tax from which the act exempted the alien. It is doubtful whether the question would have arisen had not the amount of the deposit been the same as that of the head tax; but in any event it can hardly be considered practical, inasmuch as it must be admitted that under the powers conferred on him the Commissioner General of Immigration, with the approval of the Secretary of Commerce and Labor, may with reason insist upon a sum at least equal to the tax by way of guarantee.

The question of the applicability of the head tax requirement to aliens in transit through the United States, or such as touch at its ports while en route to another country has received the consideration of the Attorneys General of the United States on more than one occasion. The requirement of a "head tax deposit" (that is, a deposit equivalent in amount to that of the head tax imposed on aliens entering the country) in the case of aliens claiming to be in transit through the United States, has been held legal, though the opinion cited contained a caution against too strict an enforcement of the regulation.[21] An earlier opinion holds that the tax provided by the Acts of August 3, 1882, and August 18, 1894, do not apply to aliens who touch at our ports en route to some other country and whose destination is not the United States.[22]

[19] 185 U. S. 296, 46 Law Ed. 917.
[20] 140 Fed. 829.
[21] 25 Op. Atty. Gen. 109, January, 1904.
[22] 24 Op. Atty. Gen. 590, February, 1903.

Aliens Who Do Not Enter the United States Because Excluded

from admission by the immigration authorities are exempted from the payment of the tax by section 1 as of natural and necessary implication.[23] Yet, as has been shown,[24] Rule 1 provides that the tax collected on account of aliens who are not permitted to land but are held for examination by a board of special inquiry.....shall be held as a special deposit to be refunded.....when the alien detained for examination has been excluded." There appears to be no authority for the collection of the head tax *as such* prior to the admission of the alien on whose account it may later be collected; and even granting that the "tax" mentioned in the rule is only a sum of money equivalent to the amount of the tax, and not the tax itself, the reasons for requiring the deposit of the same in the case of aliens in transit do not seem to exist where the only question is as to whether an alien shall be admitted as an alien immigrant, and who, pending such determination, is detained under the personal supervision of the immigration authorities, or under the personal control of the master of the vessel bringing such alien to the United States port. When the alien is within the control of the immigration authorities pending the determination of the question of whether or not he will eventually be allowed to enter, it is not perceived what room there is for

[23]It has been held to be collectible under the Act of August 3, 1882, on account of convicts or lunatics, although by the terms of the act they were not permitted to land (18 Op. Atty. Gen. 135). That act provided for the payment of a duty from each and every passenger coming by steam or rail from any foreign port to any port of the United States. If the tax was to be considered as a duty, it is hard to reconcile the payment of duty as such in the absence of entry into the United States by the person or thing on whose account the duty was exacted; especially where, as in this case, the law prohibited the admission of the person into the United States and provided for his deportation. This decision can, however, have no bearing on questions arising under the present act, as the tax can only be collected on account of aliens "entering the United States."

[24]*Ante*, p. 156.

a guaranty on the part of the transportation company; and when he is within the control of the master the act penalizes carelessness on the owner's part which results in an unlawful entry by the alien in a sum many times exceeding the amount of the head tax.[25] In considering whether or not the courts would uphold this provision of Rule 1 we go no further than to say that as yet deposits of this nature have been sustained under both the immigration and Chinese exclusion acts only on the theory that they constitute proper means to prevent violations of those acts; and that while deposits may be lawfully required from aliens purporting to enter the United States merely for the purpose of transit on the ground given, those grounds should not be invoked to sustain such a requirement in the case of alien immigrants as a condition precedent to the determination of the question whether or not they shall be allowed to enter at all. It may be said, however, that this arrangement is largely one of convenience both to the immigration authorities and to the tranportation companies, and would not seem a likely one to be submitted to judicial determination.

Aliens Who Have Been Lawfully Admitted to the United States and Who Shall Later Go in Transit from One Part of the United States to Another Through Foreign Contiguous Territory

are likewise exempt from the payment of the tax. The act makes the basis of exemption prior lawful admission to the United States; and to this condition the Department attaches another, to wit, previous payment of head tax at the time of prior admission.[26] The imposing of this condition would, however, seem to be authorized in all cases where the payment of the head tax was at the time of entry a necessary incident of lawful admission.

[25]Section 19.

[26]Rule 1, subdivision 3; *ante*, p. 156.

Aliens Arriving in Guam, Porto Rico, or Hawaii

are not subject to the provisions of this section; but if any alien not having become a citizen of the United States shall later arrive at any port or place of the United States on the North American Continent the *provisions of this section* apply. Rule 1, subdivision 3, provides that if any such person, still being an alien, shall later reach a United States port on the North American Continent, head tax must be paid in respect of him. If this clause means that the head tax shall in such case be levied and collected merely because the alien has not become a citizen of the United States, the validity of the rule is open to grave objection, as it goes beyond the meaning and words of the act which says that in the cases cited the provisions of section 1 shall apply. This would seem to mean those provisions taken as a whole; taken as a whole they contain certain specific exemptions; and one of these exemptions applies to alien residents of any possession of the United States. Read in the light of this provision of the act, an alien, who arrives in Guam, Porto Rico, or Hawaii, and, while he does not become a citizen of the United States, nevertheless establishes his residence in any one of those islands, becomes thereby a resident of a possession of the United States, and would seem necessarily to fall within the exemption of the act.

Subdivision 1 of Rule 1 exempts from the operation of the head tax provision aliens who come to the United States from Porto Rico or Hawaii, and who reach those places prior to July, 1907, and present an appropriate certificate. The certificate referred to is that prescribed in Rule 14, which contains the following provisions:

"Aliens arriving in Porto Rico or Hawaii bound for the continent shall be inspected and given a certificate, signed by the immigration officer in charge at San Juan or Honolulu, showing fact and date of landing and payment of head tax.

Aliens who, having been manifested *bona fide* to Porto Rico or Hawaii and having resided there for a time, signify to the immigration officer in charge at San Juan or Honolulu an intention to go to the continent, shall be furnished such certificate, as evidence of their regular entry at an insular port.

Aliens applying at continental ports and surrendering the certificate above described shall, upon identification, be admitted without further examination. Failure to present the certificate shall be deemed presumptive evidence that examination has not occurred in Porto Rico or Hawaii, and the alien shall be arrested in the manner provided by law and deported, unless he shows that his presence in the country is lawful or that the limitation of the statute has expired."

Tourists.

Aliens visiting the United States as tourists on pleasure or business are exempt under subdivision 3 of Rule 1 from the payment or deposit of head tax, if the officer in charge is satisfied beyond a reasonable doubt that they come only to visit the United States for a short period.

Seamen

landing in pursuit of their calling are exempt under subdivision 3 of Rule 1 from the payment of the head tax. But, as was said in the case of Taylor v. United States,[27] it is of course possible for a foreign sailor to land unlawfully; and when that landing is for the purpose of entering this country in the capacity of an alien immigrant the foreigner so doing *ipso facto* ceases to be a sailor, is removed from the exemption, and becomes liable to the payment of the tax like any other immigrant. It has been held that the payment of the head tax can be required on account "horsemen" or persons shipping on a vessel bound for the ports of the United States in charge of horses being transported to

[27]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

this country when it appeared that they shipped only for the voyage over, and did not sign for the round trip, and when there was, furthermore, no evidence that they intended to return by the same vessel.[28] The dissent on the part of one of the members of the court was based on the ground that the mere fact that such aliens failed to sign for the return trip was of itself no indication of an intention to give up their calling and to take up their residence in the United States. It may be said in this connection, however, that such persons, although seamen as far as the application of the immigration acts is concerned, are not professional mariners; that no nautical knowledge is required on the part of those who ship merely for the purpose of tending cattle in transportation, and, finally, that while there may be persons who make a living by services regularly rendered in the course of such employment, this calling can hardly be said to constitute a recognized trade or profession in the sense of a living made at sea. It appears that there is good ground for a distinction between the class of persons thus employed and regular seamen whose only occupation is the sea; hence that while it might be going too far to assume that merely because a seaman does not sign for a return voyage from a United States port this is to be taken as indicating his lack of intention to reship in the ordinary course of his occupation, and, on the contrary, intends to take up his residence in this country, such an assumption may be warrantable in the case of "horsemen" whose occupation is more likely than not to terminate with any particular voyage. It may be added that the Supreme Court refused on application to grant a writ of *certiorari* requested in the case last cited; and that in connection with this denial the decision of the Circuit Court of Appeals gains an added significance.

It has been held that, in the absence of evidence showing that a shipowner had reason to suppose that seamen desert-

[28]United States v. Atlantic Transport Co., 188 Fed. 42.

ing into United States territory made the voyage to this country with the intention to desert on their arrival here, the former is not liable for the payment of the head tax imposed by the act.[29]

Stowaways.

Both the act and the present rules in force are silent on the application of the head tax provisions to alien stowaways.

Under Rule 23 of the regulations of July 1, 1907,[30] it was provided that head tax was to be certified on their account. This obligation would seem to rest, however, on the condition that when the ship arrives at the United States port the alien is still a stowaway; for nothing in the act can be construed to make it prohibitive on the master's part to allow such persons to sign on as members of the ship's crew as long as such action is *bona fide,* and the alien in fact changes his character from that of stowaway to genuine seaman. It might be questioned, however, as to whether or not a greater amount of precaution in granting such a person shore leave while in a United States port might be demanded of the master than in the case of the members of the crew whose status as such was not so short lived. This very question arose in the Taylor case,[31] where the indictment alleged that the alien was a stowaway under order of deportation. But the court held that there was nothing in the fact that an alien had been refused leave to land and had been ordered to be deported to make it impossible as a matter of law for the British master subsequently to accept him as a sailor on the high seas even if bound for an American port. The authority of the Secretary of Commerce and Labor would not seem to extend so far under the act as to permit him lawfully to prohibit the exercise of this power on the part of a master even in an

[29]United States v. International Mercantile Marine Co., 171 Fed. 841.
[30]13th Edition.
[31]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

American port—and certainly not when in the open sea and flying the flag of his nation.

Arrangement for the Collection of Head Tax Under the Canadian Agreement.

Section 1 of the act authorizes the Commissioner General of Immigration by agreement with transportation lines, as provided in section 32 of the act, to arrange for the payment of the tax imposed by this section upon any or all aliens seeking admission from foreign contiguous territory; and section 32 authorizes the Commissioner General to prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico and to enter into contracts with transportation lines for that purpose. This subject is fully covered in the discussion of section 32.[32]

The Purpose and Intent of the Head Tax Provisions.

Viewed in the light of the above rules, considered in connection with the act itself, the natural conclusion reached is that the purpose of Congress was to impose a head tax on a limited class of aliens. It is true that the act provides in its first section that *all aliens* shall be subject to the tax. But a careful analysis of the persons and classes excepted in the first section and in section 41 points to the fact that the class of aliens subject thereto is the immigrant class, or those foreigners who come to the United States for the purpose of making this country their home.

Merely because the act may be said generally to apply to all aliens—immigrants and others—it does not follow that all of its provisions apply to all immigrants and others. First of all it excludes *all aliens* whether coming to the United States to visit, or to make it their home, who are suffering with certain mental, physical, or moral disabilities duly set forth in section 2. The act does not pro-

[32] *Post*, p. 300.

vide rules for the immigration of such people; it merely provides the rules under which they are excluded, and authorizes regulations under which such exclusion can be made effective.

Such aliens being eliminated from the operation of further provisions of the act, there remain subject thereto immigrants and all other aliens, who, not being excluded, are admitted. The first condition to admission being the payment of the head tax, both immigrants and non-immigrants would, in the absence of certain exempting provisions, be subject thereto. At the outset, however, section 41 provides that the act shall not apply to accredited officials of foreign governments, or to their suites, families, or guests. The next limitation in the application of the head tax is that it shall not be paid by *bona fide residents* of Canada, Newfoundland, Cuba or Mexico; in other words, that if any alien inhabitant of the North American Continent, Newfoundland, or Cuba *does not* come to the United States with the purpose of residing there, he is not liable to the payment of the tax. The second limitation is in favor of any alien resident of "any possession of the United States." The provision does not designate ex-continental or insular possessions, but uses the general term "any possession." As to this second exempted class, then, a definite *residence* already acquired is, as in the first class, apparently made the basis of the exemption. The third limitation includes "all aliens in transit through the United States." As entrance into the United States for the purpose of passing through it is wholly dissociated from the fact of coming to its shores for the purpose of residing there, the fact of a residence elsewhere again seems to be the basis for the exemption. The fourth exemption in favor of aliens who, having lawfully entered the United States, shall then pass in transit from one part of the United States to another through foreign contiguous territory, applies equally to those who are and who are not exempted from the payment of the tax at the time of entry. If

exempt at the time of entry the exemption continues; if not, payment of the head tax will not be required a second time. Rule 1,[33] as stated,[34] provides that no payment or deposit of head tax will be required from aliens visiting the United States as tourists on pleasure or business. The mere fact of an alien coming to the United States "on a visit" necessarily implies a residence elsewhere. Finally, all will agree that an accredited official of a foreign government coming to the United States necessarily retains his native domicile and allegiance, and that his residence here is purely temporary and for official purposes.

In view of these provisions it may be said that the act exempts from payment of the head tax the two classes of aliens, *i. e.,* those who enter the United States and who are residents of any possession thereof; and those who enter the United States and have a *bona fide* residence elsewhere. Eliminating these two classes—and in eliminating them we necessarily eliminate aliens entering this country for the purposes of transit—there remains but one class of aliens to be considered—that class which comes to the United States claiming no residence therein or elsewhere, and not with the purpose of visiting or passing through the country . This class must necessarily consist of those who come to the United States with the purpose of making it their home; in other words, the immigrant class. It is plain that the tax is not imposed as conditional to mere entry, for an alien who enters lawfully is not taxed provided he does not remain; neither is it imposed as a condition of the alien's presence in the United States, for the law exempts the alien therefrom as long as the immigration authorities have no good reason to believe that the presence is permanent. It would seem to follow that the act authorizes the collection of the head tax only on account of aliens who,

[33] 1, subdivision 3-h.

[34] *Ante,* p. 164.

giving up their former residence and domicile, enter the United States for the purpose of making it their home and permanently residing therein.

That part of section 1 which relates to the right of the President to exclude aliens who are found to be abusing passport privileges will be discussed in connection with section 2,[35] since it relates to an excludable class of foreigners.

Section 2. That the following classes of aliens shall be excluded from admission into the United States: All idiots, imbeciles, feeble-minded persons, epileptics, insane persons, and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time previously; paupers; persons likely to become a public charge; professional beggars; persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which may affect the ability of such alien to earn a living; persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; polygamists, or persons who admit their belief in the practice of polygamy; anarchists, or persons who believe in or advocate the overthrow by force or violence of the Government of the United States, or of all government, or of all forms of law, or the assassination of public officials; prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who are supported by or receive in whole or in part the proceeds of prostitution; persons who procure or attempt to bring in prostitutes or women or girls for the purpose of prostitution or for any other immoral purpose; persons hereinafter called contract laborers who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written or printed, expressed or implied, to perform labor in

[35] *Post*, p. 201.

this country of any kind, skilled or unskilled; those who have been, within one year from the date of application for admission to the United States, deported as having been induced or solicited to migrate as above described; any person whose ticket or passage is paid for with the money of another, or who is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes and that said ticket or passage was not paid for by any corporation, association, society, municipality, or foreign government, either directly or indirectly; all children under sixteen years of age unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor, or under such regulations as he may from time to time prescribe: *Provided,* That nothing in this act shall exclude, if other wise admissible, persons convicted of an offense purely political, not involving moral turpitude: *Provided further,* That the provisions of this section relating to the payments for tickets or passage by any corporation, association, society, municipality, or foreign government shall not apply to the tickets or passage of aliens in immediate and continuous transit through the United States to foreign contiguous territory: *And provided further,* That skilled labor may be imported if labor of like kind unemployed can not be found in this country: *And provided further,* That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professor for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants.

Aliens Excluded from Admission into the United States.

In considering what aliens are excluded from admission into the United States the term *admission* must be understood in its legal sense, *i. e.,* as designating not mere physical presence in the ports or territory of the United States, but physical presence coupled with permission of the proper authorities to enter and be at large after examination by those authorities as to the lawful right of such aliens to enter. The act itself provides that the mere fact of land-

ing for the purpose of such examination, or of detention in hospital or elsewhere pending such examination, or pending deportation or eventual entry shall not be deemed a landing in law.[36]

As stated[37] the aliens excludable under section 2 of the act are (with certain exceptions to be considered later) all aliens attempting to enter the United States, and this irrespective of whether or not any such alien is seeking to enter with the intention of taking up his residence in this country. The power of Congress to admit or exclude aliens whether in the exercise of the right inherent in every sovereign state so to do, or of the right to regulate commerce with foreign nations, is not open to controversy;[38] and in the exercise of that right it may regulate the admission of any and all aliens even under an act the primary purpose of which appears by its title to be directed against a special class, in the absence of other provisions of the same act which conclusively indicate that the operation thereof is to be limited to the class designated in the title. The present act, however, contains no such restrictive provisions; on the contrary, the wording of at least one of its sections has been held to be such as "to avoid the suggestion that no one was within the act who did not come here with the intent to remain." [39] But, aside from the high authority cited, a general reading of the law points to the conclusion that Congress, in enacting these provisions, has exercised not only its undeniable right to protect the United States against receiving undesirable residents, but the equally incontestable right to protect this country against the mere presence or contact of any and all aliens, which, in the opinion of Congress might prove a menace to our population and institutions. Where, however, the act is invoked in support of the right to exclude under

[36]Section 16.

[37]*Ante*, p. 149.

[38]United States *ex rel.* Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979.

[39]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

circumstances where to do so would mean the invasion of private rights of domicile lawfully acquired, such a claim can only be supported by direct provisions contained in the act showing that the intention of Congress was to bring about such a result.

A.

"All idiots, imbeciles, feeble-minded persons, epileptics, insane persons and persons who have been insane within five years previous; persons who have had two or more attacks of insanity at any time within five years previously."

Lunatics and idiots were excluded by the Act of August 3, 1882. Imbeciles and feeble-minded persons, as well as those who have been insane within five years previous, and epileptics are excluded under the present act for reasons which are obvious and equally sound. From the fact that a person has had two or more attacks of insanity at any time previous to his attempt to obtain admission to the United States, or from the fact of his insanity within five years prior to his coming, it may justly be presumed that such attacks are not unlikely to recur, or that an intellect which has within five years been utterly prostrated is not free from the effects of the disease. Complete recovery from such attacks is, for all practical purposes, and particularly under the conditions surrounding the landing of immigrants, incapable of absolute proof; and Congress, in the exercise of its power to protect citizens and property in the United States from the acts of insane persons, is not limited to the exclusion of those whose insanity is a proven fact, but may justly exclude those from whom such acts may probably or even possibly be expected. It would, therefore, seem absolutely necessary that some reasonable and fair standard, such as that provided should be accepted by which the applicant's mental qualifications for admission can be determined by the board of special inquiry provided in section 25, in the absence of expert testimony as to present mental condition or the likelihood of

recurring attacks. There would seem to be no valid reason against providing that aliens giving indications of insanity after admission should be deported on the ground of having been thus affected at the time of their admission, should the symptoms develop within so short a period after arrival as to give just ground for such presumption. In the absence of such a provision, however, such alien must be deemed to be lawfully in the United States.

B.

"Persons afflicted with tuberculosis, or with a loathsome or dangerous contagious disease; persons not comprehended within any of the foregoing excluded classes who are found to be and who are certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of a nature which might affect the ability of such alien to earn a living."

Persons afflicted with tuberculosis might well, it would seem, have been excluded under the Act of 1903, although the disease is not specfically mentioned in section 2 of that act. In fact, persons afflicted with pulmonary tuberculosis (or consumption) and tuberculosis in flagrantly contagious forms were excluded thereunder. The admission of any alien afflicted with tuberculosis in any form is, however, specifically prohibited under the present act.

While it is true that those aliens above described as "mentally and physically defective," may, in individual cases, be found to be "likely to become a public charge," and excludable under the clause in this section of the act which excludes aliens merely because they are held likely to so become irrespective of any mental or physical disability, the denomination of aliens thus affected is not strictly synonymous with the term "likely to become a public charge." The wording of the section is such that it is clear that aliens mentally or physically defective, such mental or physical defect being of a nature which may affect their ability to earn a living, constitute a separate excludable class, while aliens may be affected with

mental or physical ailments which may not be of such a nature as to lead to their becoming an object of the public bounty. On the other hand, such a contingency may be likely to occur from causes purely temperamental, or from the mere fact of the lack of funds on the part of the applicant for admission, aside and apart from the question of either physical or mental disability.

C.

"Paupers; persons likely to become a public charge; professional beggars."

Professional beggars were first excluded in terms in the Act of 1903,[40] and paupers have in terms been excluded since the Act of March 3, 1891.[41] Persons likely to become a public charge have been excluded ever since the passage of the Act of August 3, 1882,[42] which forbade the admission of any "person unable to take care of himself or herself without becoming a public charge." The excluding clause just cited was held not to refer to the passenger's personal efforts alone, but to be aimed at those who were likely to become public charges, either because of their own inability to maintain themselves, or because of the inability or unwillingness of other persons to maintain them.[43] Such aliens are not exempted from the operation of the immigration acts because of a treaty entered into between the United States and the alien's sovereign, when such treaty excepts from its operation any ordinance or regulation relating to police and public security.[44] The term "likely to become a public charge" as used in the present act includes the likelihood of becoming a criminal as well as a pauper.[46]

[40] 32 Stat. at L., part 1, p. 1213.
[41] 26 Stat. at L. 1084.
[42] 22 Stat. at L. 214.
[43] *In re* Day, 27 Fed. 680.
[44] Japanese Immigrant Case, 189 U. S. 86, 1903, 47 Law Ed. 721.
[46] United States v. Williams, 175 Fed. 274.

Admission Under Bond.

The subject of the admission under bond of persons likely to become public charges will be discussed in connection with section 26.[47]

D.

"Persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude."

The Act of 1875 forbade admission into the United States of aliens "who are undergoing a sentence for conviction in their own country of felonious crimes other than political or growing out of or the result of such political offenses, or whose sentence has been remitted on condition of their emigration;" the purpose of the provision being apparently aimed, not at persons who had been convicted of felonies abroad, but at escaped convicts, or convicts released only on the condition that they should leave their country. The Act of 1882 prohibited the admission of "convicts," and made provision for their return. The Act of 1891 forbade the entrance of any persons "who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude," with the proviso that the act should not apply to persons convicted of a political offense "notwithstanding said political offense may be designated as a felony, crime, infamous crime, or misdemeanor, involving moral turpitude by laws of the land whence he came or by the court convicting." In the Act of 1893, the clause immediately preceding was omitted, presumably on the ground that the question of moral turpitude was vital only inasmuch as it might be deemed to affect the interests and safety of the people with whom the alien might be allowed to mingle and consort, of which interests and safety Congress might well be considered a sufficient judge, irrespective of the expressions of foreign laws or foreign tribunals Under

[47] *Post*, p. 295.

the present act Congress has gone a step further in making an admission of the commission of crime or misdemeanor good cause for exclusion.

The admission.

Since deportation proceedings are not criminal by nature, it would be unsafe to contend that the effectiveness of the admission as a ground of expulsion necessarily depends on its voluntary character. The question has not thus far arisen for judicial consideration. The writer takes the view that, where such an admission is relied on as a ground of expulsion or exclusion, the fact that it was actually obtained by means of deceit or threats will not, *per se,* establish a defense on which the alien can always rely.[48] But on the other hand when an executive officer is satisfied that the admission has been thus unfairly obtained he should exercise the greatest vigilance in deciding whether the damaging statement represents the fact. Otherwise there would be no admission, whether justly or unjustly obtained, on which to base an excluding or expelling decision. What the officer is seeking is the true state of facts; and it would seem that, in the procedure governing deportation proceedings, he should not be bound by those considerations which obtain in criminal trials, and which, on grounds of public policy, have led to the adoption of the principle that it is better that the existence of a suspected state of facts remain unrevealed than that it be brought to light as the result of unlawful or unfair methods. But if the alleged admission is obtained by threats of violence, or otherwise unfairly *in the course of a hearing*—as contrasted with a prior statement which is later made the basis of those proceedings—the author is of the opinion that it cannot be justly made the

[48]It has been held that admissions by aliens in proceedings for deportation on the ground of being unlawfully in the country are legal evidence in the absence of improper means employed for securing such admissions or confessions. *In re* Umeno, 3 U. S. D. Ct. Hawaii 481; and see *In re* Lea, 126 Fed. 234.

basis of deportation on that count. This is not because the admission could not be considered as evidence by the executive officers, but because the manner in which it has been obtained taints the *bona fides* of the hearing, and should result in throwing the proceedings open to judical review.[49]

It has been held that the question of whether such an admission has been obtained prior to the hearing by plying the prisoner with liquor or by means of threats is a pure question of fact for the executive authorities.[50]

The act does not authorize the deportation of an alien on the ground of having been convicted of a felony where it appears that the foreign conviction did not occur until after his admission into the United States.[51] The Act of 1882 has been construed to bar admission into this country to aliens who have been convicted in a foreign country of an assault with a deadly weapon;[52] but by the terms of that act "any convict" was not entitled to land. Since the Act of 1891 the crime or misdemeanor must, to prove a bar to admission, involve moral turpitude. Thus, the act of stabbing a man in Italy in retaliation for an unprovoked assault was held (obiter) not to involve moral turpitude;[53] and in a later case[54] the point came up squarely for decision as to whether or not the crime of stabbing another involves moral turpitude, and the court

[49] It was held in the case of a domiciled alien who on the occasion of his return from his second visit abroad had given a false name to the inspection officer and who was later arrested on the ground of having admitted the commission of a crime involving moral turpitude that the court would not interfere with the order of deportation; but the dissenting judge said that a hearing could not be fair in which it was attempted to supply the absence of an admission by proof of the wrongful act or at which it was held that giving a false name on re-entry was tantamount to entry without inspection. United States *ex rel.* Elliopulos v. Williams, 192 Fed. 536.

[50] Glavas v. Williams, 190 Fed. 686.

[51] *Ex parte Koerner,* 176 Fed. 478; *Ex parte* Watchorn, 160 Fed. 1014.

[52] *In re Aliano,* 43 Fed. 517.

[53] United States *ex* Funaro v. Watchorn, 164 Fed. 152.

[54] United States *ex rel.* Calamia v. Redfern 180 Fed. 506.

held that it did not. Nor, it seems, does the act of striking another with a piece of firewood when a third party is attacking the same party with a knife,[55] nor does the act of carrying concealed weapons constitute such an offense.[56] But these authorities cannot, it is thought, be deemed conclusive on the point that under no circumstances could such acts involve moral turpitude; and it seems not unreasonable to suppose that were such assaults committed under circumstances showing treachery or deceit on the part of the defender or even, perhaps, the employment of overwhelming force while the victim was at an utter disadvantage, either by virtue of sex, old age, infancy or by being asleep, sick or helpless at the moment of attack, the opposite conclusion might well be reached.

It has been held that a single act of fornication in Austria by a married alien with an unmarried woman, constituting as it does neither crime nor misdemeanor under the Austrian law, and little more than a private wrong under the common law, cannot constitute grounds for deportation from the United States under this section.[57] This case was subsequently reversed by the Circuit Court of Appeals.[58] It is to be observed however, that the court in the case last cited did not expressly state that the act did not involve moral turpitude; but based its decision on the fact that it did not constitute a crime or a misdemeanor in the jurisdiction where it was committed.[58a]

It seems that in order to subject the alien to deportation under this section the crime must have been committed prior to admission into the United States; and

[55] *Ex parte* George, 180 Fed. 785.

[56] *Ex parte* Saraceno, 182 Fed. 955.

[57] United States *ex rel.* Huber v. Sibray, 178 Fed. 144.

[58] 185 Fed. 401.

[58a] See Prentis v. Cosmas, 196 Fed. 372, where the departmental decision that an act committed by an alien involved moral turpitude was apparently upheld as final by the circuit court of appeals for the 7th circuit.

where an alien lawfully domiciled in this country, leaves it for the purpose of spending a few hours in foreign contiguous territory and then returns, the re-entry cannot be deemed an original entry for the purpose of deportation charges based on the alleged commission by the alien of felonious acts committed by him in the United States after original entry, and before he left this country for the temporary visit to the contiguous territory whence he returned.[59]

D. ANARCHISTS.

The provision as to anarchists is a re-enactment of the corresponding provision of the preceding act of March 3, 1903, held constitutional by the Supreme Court in the case of Turner v. Williams.[60] In that case it was contended that the act of 1903 was unconstitutional in that it violated the first, fifth and sixth articles of the Amendments to the Constitution and of Section 1 of Article 3 thereof; and that no power is delegated by the Constitution to the general government over alien friends with reference to their admission into the United States or otherwise, or over the beliefs of citizens, denizens, sojourners, or aliens, or over the freedom of speech or of the press. After pointing out that prior cases had disposed of the specific contentions regarding the fifth and sixth amendments and paragraph 1 of article 3, and the denial of the delegation to the general government of the power to enact the Act of March 3, 1903, the Court said: "The argument seems to be that, conceding that Congress has the right to shut out any alien, the power, nevertheless, does not extend to some aliens, and that if the act includes all alien anarchists, it is unconstitutional because some anarchists are merely political philosophers whose teachings are beneficial rather than otherwise....If the word

[59]Lewis v. Frick, 189 Fed. 146. Reversed by the Circuit Court of Appeals, 195 Fed. 693; *In re* Saraceno, 182 Fed. 955.

[60]United States *ex rel.* Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979.

"anarchists" should be interpreted as including aliens whose anarchistic views are professed as those of political philosophers, innocent of evil intent, it would follow that Congress was of the opinion that the tendency of the general exploitation of such views is so dangerous to the public weal that aliens who hold and advocate them would be undesirable additions to our population, whether permanently or temporarily, whether many or few; and in the light of previous decisions the act in this aspect would not be constitutional as applicable to any alien who is opposed to all organized government."

Section 38 of the act prohibits entrance into the United States or any territory or any place subject to the jurisdiction thereof to anarchists; and further provides that any person who assists or aids such aliens to enter, or who connives or conspires with any person or persons to allow, procure or permit any such persons to enter otherwise than provided by law shall be punished by fine or imprisonment or both. It is worthy of note that this section prohibits any "person" who professes this form of belief from entering the United States. Section 2 specifically excludes aliens who are anarchists. If the use of the term "persons" was to include therein all persons irrespective of nationality, it necessarily includes citizens of the United States. But a great justice of the Supreme Court of the United States has held that the deportation of a citizen of the United States amounts to banishment[61] and that no citizen can be banished in the absence of a jury trial. It is thought however, that the use of the word "enter" should be given great weight in construing the section, and should be taken to mean, in connection with the title and other provisions of the act, entrance into the United States by one other than an American citizen native born or naturalized. The meaning of the word "enter" as used in the act will be later considered in con-

[61]MR. JUSTICE BREWER in his dissenting opinion in the case of United States v. Ju Toy, 198 U. S. 269, 49 Law Ed. 1046 *et seq.*

nection with the discussion of the rights acquired by aliens through the fact of their having obtained a domicile in this country.[62]

E.

"Polygamists, or persons who admit their belief in the practice of polygamy."

Section 2 of the preceding act prohibited the entrance of polygamists into the United States, whereas, by the present act mere belief in the system duly admitted constitutes a bar to such entrance. Polygamists were likewise excluded by the Act of 1891,[63] and in a decision rendered under that law upholding the deportation of the alien niece of a naturalized alien who had lawfully married her in Russia, and who had had by her an idiot son, the Court, basing its excluding decision on Wharton[64] and Reinhold Schmid[65] cited these authorities to the following effect: "A matrimonial relation.....that is prohibited by our laws cannot be tolerated in our territory, though it was entered into by foreigners before they visited us. We will, therefore, tolerate no polygamists or incestuous unions of foreigners settling within our limits."

The court further cited State v. Brown[66] to the effect that it is not "material that the marriage was celebrated in a country where it was valid, for we are not bound upon principles of comity to permit persons to violate our criminal laws, adopted in the interests of decency and good morals, and based upon principles of sound public policy, because they have assumed, in another state or country, where it was lawful, the relation which led to the acts prohibited by our laws."[67]

It is to be remarked that the excluding decision of the Court in the case above quoted was based not on the

[62] *Post*, p. 427.

[63] Act of March 3, 1891, 26 Stat. at L. 1084.

[64] Wharton, Conflict of Laws, 2d Ed. Par. 175.

[65] See *Ibid.*

[66] 47 Ohio State Rep. 102.

[67] United States v. Rodgers, 109 Fed. 886.

ground that the coming to the United States of two aliens connected by the relationship shown was violative of any provision of the act or of any of the laws of the United States, but because it seemed to the court "impossible to recognize this marriage as valid in Pennsylvania." Section 1994 of the Revised Statutes of the United States provides that any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen. On the one hand it might be urged that being a citizen of the United States, such a woman would be outside the jurisdiction of the Immigration authorities; and, on the other, that it might be considered doubtful, to say the least, whether or not the boon of citizenship was intended to be bestowed by Congress on one claiming it merely on the strength of an incestuous relationship.

F.

"Prostitutes, or women or girls coming into the United States for the purpose of prostitution or for any other immoral purpose; persons who are supported by, or receive in whole or in part the proceeds of prostitution; persons who procure or attempt to bring in prostitutes, or women or girls for the purpose of prostitution, or for any other immoral purpose."

The Act of March 3, 1903 prohibited the entrance of prostitutes and persons who attempt to bring in prostitutes, or women for the purposes of prostitution. The present act excludes in addition to prostitutes, women or girls coming to the United States for the purpose of prostitution, or for any other immoral purpose. Concubines were held not to be included within the last mentioned class[68] but this decision was reversed by the Supreme Court which held that the words "for any immoral pur-

[68]United States v. Bitty, 155 Fed. 938; but where an alien woman entered this country in good faith on the representations made to her by a foreigner residing here that he would marry her on her arrival and later cohabited with him, *held*, that she did not enter for an immoral purpose. United States v. Martin, 193 Fed. 795.

pose" "show beyond question that Congress had in view the protection of society against another class of alien women than those who might be brought here merely for the purposes of prostitution."[69] The act applies to Chinese prostitutes, notwithstanding that Section 43 thereof provides that the act shall not be deemed to repeal the existing laws relating to the exclusion of Chinese;[70] and also to prostitutes who landed in the United States during the three year period provided by the Act of 1903[71] and prior to the adoption of this act.[72]

The act not only excludes prostitutes and women or girls coming to the United States for purposes of prostitution or for some other immoral purpose, but those who procure or attempt to bring such women in; and the amendatory Act of March 26, 1910,[73] further excludes the admission of persons who are supported by or who receive in whole or in part the proceeds of prostitution.

The terms "prostitution" and "immoral purposes" would seem, in spite of the fact that the Supreme Court in the case of United States v. Bitty[74] found it necessary to explain that an alien woman who came to this country as a concubine of a person resident here came for an immoral purpose, to be of such common understanding that no definition of either term will be attempted here. It suffices to say that one coming to the United States for the purpose of prostitution must be shown to come with the intent of promiscuous carnal intercourse for a money consideration.

[69]United States v. Bitty, 208 U. S. 393, 52 Law Ed. 543.

[70]Looe Shee v. North, 170 Fed. 566.

[71]Section 3.

[72]*Ex parte* Durand, 160 Fed. 558, 170 Fed. 566, *supra*.

[73]36 Stat. at L. 263. The provision that the persons of immoral character therein designated may be deported "in the manner provided" in sections 20 and 21 of the Act of February 20, 1907, refers only to the method of procedure to be adopted in the course of the steps leading immediately to deportation, and not to the three year period within which they were hitherto deportable. Chomel v. United States; Brion v. same, 192 Fed. 117.

[74]*Supra*.

In the absence of such intent she does not come here for such a purpose and is not therefore to be excluded on that ground.[75]

While marriage by an alien woman capable of naturalization under the law to an American citizen, although the ceremony is performed while she is held for deportation has been held to entitle her to an immediate discharge on habeas corpus,[76] a sham marriage contracted by an alien prostitute has naturally been held insufficient to prevent deportation under the Chinese exclusion acts,[77] and the same result would naturally follow in deportation proceedings instituted under the immigration acts.

The effect of prior domicile in the United States on the right of prostitutes to re-enter the country, has given rise to a difference of judicial opinion, the weight of authority being to the effect that prior domicile confers no such right.[78] There is but one case in which the holding is to the opposite effect. There it appeared that the alien entered the United States lawfully in the first instance, and lived here for fifteen years, during the latter part of which she practised prostitution, and then, after leaving temporarily for a visit to Panama, returned to this country in January 1910, where she was arrested under the Act of February 20th, 1907 as one entering the United States for the purposes of prostitution. The court held that her right to remain depended on the provisions of section 3 of the Act of February 20, 1907, and could only be taken away during three years after entry, and that the return did not constitute entry.[79] The question of the applica-

[75] *In re* Guayde, 112 Fed. 415.

[76] Hopkins v. Fachant, 130 Fed. 839.

[77] Wong Heung v. Elliott, 179 Fed. 110; Looe Shee v. North, 170 Fed. 566.

[78] *In re* Hoffman, 179 Fed. 839; United States v. Villett, 173 Fed. 500; *Ex parte* Petterson, 166 Fed. 536.

[79] Redfern v. Halpert, 186 Fed. 150.

tion of the immigration act to domiciled aliens returning to the United States, is considered at length in another chapter.[80]

G.

"Persons hereinafter called contract laborers, who have been induced or solicited to migrate to this country by offers or promises of employment or in consequence of agreements, oral, written or printed, express or implied, to perform labor in this country of any kind, skilled or unskilled * * * *provided* * * that skilled labor may be imported if labor of like kind unemployed cannot be found in this country; and *provided further,* That the provisions of this law applicable to contract labor shall not be held to exclude professional actors, artists, lecturers, singers, ministers of any religious denomination, professors for colleges or seminaries, persons belonging to any recognized learned profession, or persons employed strictly as personal or domestic servants."

Unlike the Act of 1903, which did not exclude contract laborers[81] but prohibited the importation of aliens under contract labor, this act expressly prohibits the entrance of such laborers into the United States. Section 2 of the Act of 1903 provided "that the provisions of this law applicable to contract labor" did not affect the exempted persons classified in the exempting proviso of section 2 of the present act quoted above. The Act of 1891 excludes "the class of contract laborers excluded by the Act of February 26, 1885," and in its fifth section amended section 5 of the last named act to read as follows:

"Nor shall the provisions of this act apply to professional actors, artists, lecturers, or singers, nor to persons employed strictly as personal or domestic servants, nor to ministers of any religious denomination, nor persons belonging to any recognized profession, nor professors for colleges and seminaries."

Neither the present act nor any of its predecessors has

[80]Chapter on Status, *post,* p. 427.

[81]Davies v. Manolis, 179 Fed. 818.

contained provisions purporting to define affirmatively what constitutes the term "laborer;" so that with one exception the classes exempted from the operation of this act are identical with those exempted from the Act of 1885. The exception—if it is in fact such—consists in the exempting under the present act from the effects thereof members of a "recognized learned profession," whereas the Act of 1885 uses the term "recognized profession." Alien "laborers" are therefore, under this act what they were under the act of 1885 as amended.

Migration a Necessary Element.

Unless the alien laborer migrates to the United States to perform the labor in question he does not come within the operation of the statute;[82] thus, the employment under contract of a Canadian residing in Canada who, in order to do his work, must cross the border daily does not violate the statute.[83]

Contract Laborer, What Constitutes.

Prior to the amendment of the Act of 1885 by that of 1891, the Supreme Court of the United States held that an alien minister entering the United States under contract with a religious society here was not a contract laborer under the act.[84] Nor is a chemist entering to take up employment on a sugar plantation[85] nor an expert window draper[86] nor skilled employees of foreign exhibitors

[82]United States v. Craig, 28 Fed. 795.

[83]United States v. Michigan Central R. R. Co., 48 Fed. 365.

[84]Church of the Holy Trinity v. United States, 143 U. S. 457, 36 Law Ed. 226.

[85]United States v. Laws, 163 U. S. 256, 41 Law Ed. 151; nor an alien induced to come to this country by promise of employment as a superintendent of a lumbering company conditioned on his being a competent woodsman, logger and mill man and a first-class mechanic, provided the agreement does not require him to perform manual labor, 27 Op. Atty. Gen. 383, 1909; nor where the nature of the employment is essentially that of superintendence; Teerthdass v. Pohoomul Bros., 15 Phil. Rep. 605.

[86]United States v. Gay, 95 Fed. 226.

of the World's Columbian Exposition.[87] An under coachman who is employed strictly as a personal or domestic servant is not a contract laborer;[88] nor are alien sailors who, although not within the exempted classes and under contract to do labor in the United States, do not come as immigrants for the purpose of performing that labor.[89] It has been held that an alien minor who, after writing to a distant relative in the United States to know if the latter would give him employment should he come to the United States, and who subsequently came, his passage being paid by his father abroad, and worked for a weekly sum and board with the relative aforesaid, and afterwards went into business for himself, was not a contract laborer within the terms of the present act.[90] Nor is an alien contract laborer excludable under the present act where it was shown that he entered this country before it went into effect and at a time when the Act of March 3, 1903, which, unlike its predecessor of March 3, 1891[91] did not exclude contract laborers, was in force.[92]

The case in re Ellis[93] has already been referred to.[94] While the Circuit Court of Appeals held in that case that a foreign chartered accountant entering this country to do professional work here under agreement was a contract laborer within the terms of the present law that decision is, for reasons already given, open to criticism and, it is safe to say, will not serve as a precedent should a similar state of facts again be presented for judicial determination.

[87] 20 Op. Atty. Gen. 89, 1891.

[88] *In re* Howard, 63 Fed. 263.

[89] United States v. Burke, 99 Fed. 895.

[90] Boties v. Davies, 173 Fed. 996.

[91] 52 Fed. 873.

[92] Davies v. Manolis, 179 Fed. 818.

[93] *In re* Ellis, 124 Fed. 637. Case dismissed, 200 U. S. 622.

[94] *Ante*, p. 72. The Attorney General has held in a comparatively recent opinion that chartered accountants are not excludable as contract laborers; and see as to alien lithographic artists, 26 Op. Atty. Gen. 284, June, 1907.

On the other hand, a foreign milliner does not come within the exempted classes, not being a professional artist;[95] nor a farmer nor a farm-hand entering the United States to work on contract on the theory that he is a domestic servant,[96] nor are alien lace-makers exempt from the excluding provisions.[97] Any one who, upon a promise made to him by another to employ him on his arrival into the United States at stipulated wages in a definite occupation, the promise being made by one who advanced him money for his passage and accompanied him on his journey, came to the United States, went to work at the wages stipulated, and continued in the employment of the person who made the promise and the advance for a year, is a contract laborer within the terms of the present act.[98]

The Contract.

Although the alien laborers barred by the act are called "contract laborers," it would not seem that, in order to render them subject to exclusion or deportation under section 2, they must come actually under a prior contract;[99] an element in the absence of which, according to decisions under the Act of 1885, the law could not be violated.[100] Under the third section of the Act of March 3, 1891, any assurance of probable employment, definite as to the time, place, and rate of wages, constituted a promise

[95]United States v. Thompson, 41 Fed. 28.

[96]United States v. Parsons, 130 Fed. 681.

[97]23 Op. Atty. Gen. 381, 1901.

[98]United States v. Redfern, 180 Fed. 500.

[99]It was held in the case of Fornow v. Hoffmeister, 6 Phil. Rep. 33, that a contract of labor executed by the parties in Manila in January, 1901, and by them admitted to be true, cannot be considered a violation of the Contract Labor Law of 1885 extended to the Philippine Islands in 1899, where the facts fail to show that the contract was made in pursuance of a prior agreement entered into by a resident of the Philippines and a person in a foreign country.

[100]United States v. Edgar, 48 Fed. 91; Moller v. United States, 57 Fed. 490.

of employment,[1] and any alien coming in response to such promise through advertisements printed and published in any foreign country was treated by the terms of the section as coming under a contract. In the present act the word "contract" is not used except by way of designating a certain class of alien laborers; and the only definition classifying the laborers whose entrance is prohibited excludes such aliens as "have been induced or solicited to "migrate to this country by offers or promises of employ- "ment, or in consequence of agreements, oral, written or "printed, express or implied, to perform labor in this "country."

To constitute a contract laborer, as the term is used and defined in the present act, two facts must be shown to exist: First, that the alien has migrated to the United States, and, second, that the migration is the result of an offer or promise of employment in the United States, or of an agreement to perform labor there. There seems to be no good reason why Congress should not, if it so deemed wise, prohibit this class of aliens from coming to the United States to perform labor in response to an offer too broad or too general ordinarily to give rise to a contractual obligation on the part of the person submitting it, and this, it appears, is just what Congress has done. The same may be said with regard to migration "in consequence of agreements;" that is, that the *agreement* need not necessarily contain all the requisites of a formal contract. Section 6, to be considered in later chapter, would seem to support this view where it provides that any alien coming to this country in consequence of advertisements printed in a foreign country promising employment "shall be treated as coming under promise or "agreement as contemplated in section 2." The coming

[1]United States v. Baltic Mills Co., 124 Fed. 38.

"under contract" is no longer essential to a violation of the act.[2]

H.

" * * * those who have been within one year from the date of application for admission to the United States, deported as having been induced or solicited to migrate as above described; any person whose ticket or passage is paid for with the money of another, or is assisted by others to come, unless it is affirmatively and satisfactorily shown that such person does not belong to one of the foregoing excluded classes, and that such ticket or passage was not paid for by any corporation, association, society, municipality, or foreign government either directly or indirectly; * * "

Under the Act of 1903 all that aliens whose passage was paid for by another had to show was that they did not belong to the excluded classes; but by the terms of the present section they must assume the additional obligation of showing that their ticket or passage was not provided by the various associations designated or by any foreign power. This prohibition does not, however, extend to the ticket or passage of aliens in immediate or continuous transit through the United States to foreign contiguous territory.

I.

"* * * all children under sixteen years of age unaccompanied by one or both of their parents, at the discretion of the Secretary of Commerce and Labor, or under such regulations as he may from time to time prescribe; * *"

This provision appears here for the first time in the

[2]On this point Attorney General Bonaparte expressed himself as follows: "The words 'promise of employment' are evidently here used in a broad and somewhat loose sense, meaning, not merely an offer of employment which, by acceptance on the part of any alien coming within its terms, would create a contract enforceable against some definite person or persons, but any form of words which might be reasonably understood as holding out to a possible immigrant the prospect of assured employment, although they might not import any legal responsibility on the part of anyone." 26 Op. Atty. Gen. 199, 205, March, 1907.

immigration legislation of this country. The following rule has been adopted by the Department of Commerce and Labor for the purpose of its enforcement:

All children under 16 unaccompanied by either parent, neither parent being in the United States, shall be held for special inquiry. The board shall exclude them as a matter of course unless it finds (1) that they are strong and healthy, (2) that while abroad they have not been the objects of public charity, (3) that they are going to close relatives who are able and willing to support and properly care for them, (4) that it is the intention of such relatives to send them to school until they are 16, and (5) that they will not be put at work unsuited to their years. Where the board finds these facts to exist it shall so report orally or in writing to the officer in charge and defer final action until such officer has personally inspected the child. If, in his judgment, the child should be admitted, he shall so state to the board (this fact being entered of record), which may thereupon admit. Where, in the opinion of such officer, the child is not clearly admissible, the board shall exclude and give notice of the right of appeal. If thereafter an appeal be filed, the case shall be forwarded with the recommendation either for (*1*) admission outright, (*2*) admission on bond, or (*3*) exclusion.

One of the purposes of this rule is to insure that the case of each child under sixteen unaccompanied shall receive the attention of the officer in charge and thus bring about the application of substantially uniform standards as to the admission of those cases which do not reach the department as well as prompt admission where admission ought obviously to occur.[3]

J.

" * * that skilled labor may be imported if labor of

[3]Note p. 24, Immigration Rules.

like kind unemployed cannot be found in this country; * *"

The provision found in the corresponding Act of 1903 was introduced originally in the Act of February 26, 1885.[4] It has been held, under the latter act, that while hat trimming could not be considered a new industry,[5] the manufacture of French silk stockings could be where it had been shown that there had been manufactured here stockings whereof the feet were the same as those of French silk stockings, but the legs were different and made by different machines.[6]

Seamen.

It was held in an early case that, generally speaking, persons whose trade was that of following the sea are not, when they arrive at a United States port, in the regular course of their employment, to be considered as immigrants.[7] The United States Supreme Court, in deciding the case of Taylor v. United States,[8] held that the act did not intend to prohibit alien sailors from going ashore from foreign vessels touching at ports of the United States.[9] In recognition of the principle announced in the Supreme Court decision and in order that the exemption made in favor of alien seamen shall not result in the entry into the United States of aliens of the classes excluded by law, the following rule has been promulgated by the Department of Commerce and Labor:[9a]

(a) A seaman is any person employed to serve on board a vessel, whose employment is necessary to com-

[4]Sec. 5, 23 Stat. at L. 333, 26 Stat. at L. 1085, 27 Stat. at L. 570.

[5]United States v. Thompson, 41 Fed. 28.

[6]United States v. McCallum, 44 Fed. 745, and see 26 Op. Atty. Gen. 284, June, 1907; see also United States v. Candelario, not yet reported, —— Fed. ——.

[7]United States v. Sandrey, 48 Fed. 550.

[8]United States v. Taylor, 207 U. S. 120, 52 Law Ed. 130.

[9]23 Op. Atty. Gen. 521, 1901.

[9a]Rule 10, Immigration Rules.

merce and navigation and whose name appears on the ship's articles.

(b) A person whose employment on board a vessel is not necessary to commerce and navigation, namely, a person who is insane, an idiot, an imbecile, an epileptic, or a person afflicted with tuberculosis or with a loathsome or dangerous contagious disease, is not a seaman within the meaning of this rule.

(c) Seamen who desert their ship shall, until the contrary is shown, be deemed to have abandoned their calling and to be no longer seamen within the meaning of this rule.

(d) Seamen whose employment terminates at a port of the United States and seamen who are discharged in a port of the United States are not to be regarded as seamen within the meaning of this rule, unless it appears to the satisfaction of the examining immigration officer that they intend to reship within a reasonable time on a vessel bound to a foreign port.

The reason given in the Taylor case why an alien sailor landing in the United States and availing himself of the right of shore leave granted by the master, or in the ordinary course of his duties as a member of the crew, does not come within the contemplation of the act, is because "it is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to prohibit their doing so. The contrary always has been understood by the earlier acts, in judicial decisions and executive practice."

The provision, in subdivision 1 of rule 10 to the effect that alien seamen afflicted with mental or physical disabilities which, were they not seamen, would bring them within section 2 of the act are persons whose employment on board vessels is not necessary to commerce and navigation, and are, accordingly, not seamen within the meaning of the rule, would not seem to be authorized by

any interpretation of the act. The immigration acts have consistently been held by the courts not to be directed against the landing of alien seamen in the course of their duty or on shore leave. The masters of the vessels from which they land must be—in the absence of legislation by Congress to the contrary—the sole judges of whether or not their employment on board those vessels is necessary to the commerce and navigation in which such vessels participate, whether those acts in which such seamen take a part are performed on board the vessels themselves or on land at the various ports at which they enter. It is within the power of Congress to prohibit, by means of immigration or other legislation, the landing of alien seamen in the discharge of their ordinary duties on any ground which may seem to it sufficient, whether such ground be mental, moral, or physical infirmity; but as yet Congress has not seen fit to exercise that power. It is therefore difficult to perceive what authority is vested in the Secretary of Commerce and Labor to decide, first, that an alien seaman, because consumptive or feeble minded, is not a seaman, although a part of the crew of a vessel flying a foreign flag, or, second, to exercise or attempt to exercise with regard to such seaman a power and authority which Congress has not, as yet, seen fit to exercise.

Deserting Seamen.

In rendering the decision in the Taylor case[10] the court went no further than to state that the act of 1903 could not be construed to cover the ordinary case of a *seamen going ashore.* These words must be taken in their ordinary sense. The court did not say that a deserting alien seaman did not come within the operation of the act; it did not pass on that point, but contented itself with holding that section 18 was not intended to punish the master of a vessel "for the ordinary case of a sailor deserting while on shore leave." And the court was further of the

[10]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

opinion that "of course it is possible for a master unlawfully to permit an alien to land even if the alien is a sailor." It follows that an alien may go ashore in violation of the immigration act even though a seaman, as long as such going ashore does not constitute that landing "necessary to commerce" which the act does not intend to prohibit.

In order, then, to give the department jurisdiction under the act in such cases, it seems unnecessary to indulge in the somewhat violent presumption that an alien seaman who has deserted from his vessel is no longer a seaman;[11] for as a matter of common knowledge the motive of desertion is ordinarily to leave the particular vessel on which the deserter was signed in order to ship on another—not to give up earning a living at the only trade the ordinary seaman knows. The Department's jurisdiction in such case would seem to be established by the fact that the alien seaman's landing, or at least his presence on shore in consequence of such landing, is not the result of that "going on shore" necessary to commerce not prohibited by this or earlier acts.

Seamen engaged in coastwise trade.

Rule 10 provides that alien seamen employed on vessels engaged in coastwise trade of the United States are aliens within the meaning of the immigration act and subject to its provisions.

This regulation is supported by two opinions of the solicitor of the Department of Commerce and Labor of June 14, and September 15, 1907. The latter is simply to the effect that the employment of Chinese seamen by a transportation company engaged primarily in foreign trade, but also at times and incidentally thereto in the coastwise trade, constitutes no violation of the immigration law. The conclusion reached in the

[11]Subdivision 1(c), Rule 10.

opinion of June 14 seems to be based on sound principle and a sane interpretation of the law. It is to the effect that aliens cannot be employed upon American vessels plying the coastwise trade without violating the act in question. It seems plain that the fact that the labor which the alien agrees and is employed to perform is to be done on board American ships and within the territorial waters of the United States in no way tends to lessen the mischief brought about by the presence in this country of foreign contract laborers which it was the very purpose of the act to avoid. But even if this cannot be conceded it must be admitted that to permit the presence of aliens engaged in vessels which necessarily spend a great part of their time at American docks would be no more or less than an invitation to undesirable foreigners of all kinds to assume temporarily the character of mariners for the sole purpose of seizing the many opportunities which would be thus afforded them for entering the country in violation of the laws enacted to exclude them. The spirit of the Taylor decision would seem to be that foreign seamen engaged in foreign commerce should in the natural pursuit of their calling, be allowed to land only on the assumption that such landing is a necessary incident to their employment on a vessel engaged in such commerce, or to their intended embarkation on some other ship engaged in foreign trade; that purely by virtue of this assumption their presence in the United States jurisdiction was and is necessarily of the briefest. It is obvious that like considerations cannot apply to a foreign sailor engaged in the coastwise trade whose stay, by the very fact of his employment is permanent as long as that particular vocation lasts. In addition to those provisions already cited on this subject, the following Departmental rules are in force:

Seamen engaged in foreign trade.—Subject to the foregoing limitations and restrictions, alien seamen employed

on vessels plying between foreign ports and ports of the United States may, without regard to the provisions of the immigration law, land in the United States either on shore leave or on business of the vessel, or for any purpose incident to their calling, including for the purpose of reshipping on another vessel bound to a foreign port as soon as practicable.

Seamen found in United States otherwise engaged.—Aliens, though landing in the United States as seamen, if found thereafter engaged in any occupation not connected with the business of a vessel to which they are attached, or if found to be public charges, shall be treated as other aliens are treated and shall be liable to deportation in like manner and for like causes.

Procedure and examination of seamen.—Immigration officers shall inspect those claiming to be alien seamen to such extent only as may be necessary to determine whether or not they are and intend to remain such and to prevent any violation of this rule. Those found not to be bona fide seamen (including insane, idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease) and those who intend to abandon their calling shall be inspected and dealt with in the same manner as are other aliens. This includes the requirement that masters, etc., shall, when so ordered, prevent the landing of all alien ship's employees designated by the immigration authorities as inadmissible under the law and the terms of this rule.

Presumption against vessel.—A master, owner, or consignee of any vessel who shall allow an alien seaman whose employment terminates at a port of the United States, to land without giving adequate previous notice to the immigration officers, or who shall pay off or discharge an alien seaman at such port or allow the removal of his personal effects from the vessel without such notice, shall

be presumed to have negligently failed to prevent the landing of such alien members of the crew within the meaning of section 18.

When examination of crew of vessel may be dispensed with.—The local immigration authorities may dispense with the inspection of alien seamen where the master, owner, agent, or consignee of any vessel engaged in the foreign trade of the United States shall give satisfactory assurance to the Secretary of Commerce and Labor that he will comply with the following conditions, to wit:

(a) To enforce at its foreign port of departure a rigid medical examination of aliens seeking employment on such vessel which will insure the rejection of any and all applicants suffering from any mental or physical affliction which would make them inadmissible to the United States under section 2;

(b) To notify the immigration authorities of the names of all seamen not employed or articled for the return voyage from the United States and the names of all those to be discharged in due season to permit the inspection and examination of such aliens under the provisions of the immigration act;

(c) To enforce in the ports of the United States regulations on the subject of shore leave which will prevent as far as possible the permanent landing of alien members of the crew before inspection by the immigration authorities, and to furnish the immigration authorities with the names of aliens employed on their vessels of the bona fides of whose intention to follow the sea they have any reason to doubt, and to afford opportunity for the inspection of such aliens; and, except by express permission of an immigration officer, to refuse shore leave and to prevent the landing of alien members of the crew who are insane, idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease; and

(d) To notify promptly the local immigration authorities of the names and description of seamen who desert the vessel at any port of the United States and to furnish any other information obtainable that would aid in the apprehension of such deserters.

Presumptions in favor of vessel.—Where the Secretary is satisfied that all the conditions of subdivision 7 hereof have been faithfully complied with, the master, agent, owner, or consignee of the vessel shall be deemed to have provided a competent medical examination of the vessel's crew at the time of foreign embarkation within the meaning of section 9 of the immigration act, and will be deemed to have taken reasonable precautions to prevent the landing of alien members of the crew within the meaning of section 18 of said act.

Disabled seamen.—A disabled alien seaman, who nevertheless does not intend to relinquish his calling but whom the master of the vessel is obliged under the navigation laws of the country to which the vessel belongs to return to the country where he embarked, may, under such regulations as the officer in charge deems proper to carry out the purposes of this subdivision, pass through the United States in transit to such country by the most expeditious and direct route. Where he is suffering from a loathsome or dangerous contagious disease, or with tuberculosis, or from a mental disability, or is in such physical or mental condition as to render him a person likely to become a public charge, the master must make arrangements for his proper care while in transit and furnish a sum of money sufficient to defray the expenses thereof. These provisions are made in the interest of trade and because of the peculiar position occupied by seamen under principles of international comity; and in all cases to which they apply the immigration officials shall confer not only with the master but with the consular representative of the country to which the vessel belongs.

Japanese and Korean Laborers.

Section 1 of the act provides that whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States, or to any insular possession of the United States, or to the Canal Zone, are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, entrance to the United States may be refused such aliens coming from such foreign country or from the Canal Zone, or insular possessions of the United States. In the exercise of the authority conferred by this section the President issued, on March 14, 1907, an executive order, refusing Japanese and Korean laborers, skilled and unskilled, who have received passports to go to Mexico, Canada, or Hawaii, and come therefrom, permission to enter the continental territory of the United States. The Secretary of Commerce and Labor was further directed by the terms of the order to take such measures and to make and enforce such rules and regulations as may be necessary to carry this order into effect.

The President's proclamation together with the departmental regulations on this subject appear in Rule 11 of the immigration rules:

President's proclamation.—The President's proclamation on this subject, issued March 14, 1907, reads as follows:

Whereas, by the act, entitled "An act to regulate the immigration of aliens into the United States," approved February 20, 1907, whenever the President is satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holders to come to the continental territory of the United States to the detriment of labor conditions therein, it is made the duty of the President to refuse to permit such citizens of the country issuing such passports to enter the

continental territory of the United States from such country or from such insular possession or from the Canal Zone;

And Whereas, upon sufficient evidence produced before me by the Department of Commerce and Labor, I am satisfied that passports issued by the Government of Japan to citizens of that country or Korea and who are laborers, skilled or unskilled, to go to Mexico, to Canada, and to Hawaii, are being used for the purpose of enabling the holders thereof to come to the continental territory of the United States to the detriment of labor conditions therein;

I hereby order that such citizens of Japan or Korea, to wit: Japanese or Korean laborers, skilled and unskilled, who have received passports to go to Mexico, Canada, or Hawaii, and come therefrom, be refused permission to enter the continental territory of the United States.

It is further ordered that the Secretary of Commerce and Labor be, and he hereby is, directed to take, through the Bureau of Immigration and Naturalization, such measures and to make and enforce such rules and regulations as may be necessary to carry this order into effect.

Effect of proclamation.—The proclamation requires that Japanese and Korean laborers, skilled or unskilled, who present at a continental port a passport entitling them only to admission to Mexico, Canada, or Hawaii, shall be rejected. It does not in any particular relieve Japanese and Korean aliens from examination under the general provisions of the law.

Rejection or admission as affected by passport.—If a Japanese or Korean laborer applies for admission and presents no passport, it shall be presumed (1) that he did not possess when he departed from Japan or Korea a passport entitling him to come to the United States, and (2) that he did possess at that time a passport limited to Mexico, Canada, or Hawaii. If he presents a passport entitling him to enter the United States or not limited to Mexico, Canada, or Hawaii, he shall be admitted, unless he belongs to one of the classes excluded by the general provisions of the law. If he presents a passport limited to Mexico, Can-

ada, or Hawaii, but claims that he is not a laborer, skilled or unskilled, proof of such claim shall be required.

Right of appeal, etc.—All Japanese or Korean laborers excluded under this rule shall be advised not only of their right of appeal where one lies, but also that they may communicate by telegraph or otherwise with any diplomatic or consular officer of their government, and they shall be afforded opportunity for doing so.

Definition of term laborer.—For practical, administrative purposes, the term "laborer, skilled or unskilled," within the meaning of the Executive order of March 14, 1907, shall be taken to refer primarily to persons whose work is essentially physical, or, at least, manual, as farm laborers, street laborers, factory hands, contractors' men, stablemen, freight handlers, stevedores, miners, and the like; and to persons whose work is less physical, but still manual, and who may be highly skilled, as carpenters, stonemasons, tile setters, painters, blacksmiths, mechanics, tailors, printers, and the like; but shall not be taken to refer to persons whose work is neither distinctively manual nor mechanical, but rather professional, artistic, mercantile, or clerical, as pharmacists, draftsmen, photographers, designers, salesmen, bookkeepers, stenographers, copyists, and the like.

Passports to be indorsed.—Passports presented by Japanese and Koreans shall be plainly indorsed, in indelible ink, by the officer admitted or rejecting the applicant, in such a maner as to show the fact and date of admission or rejection. The officer shall sign such indorsement, and the passport shall be returned to the presenter.

Sec. 3. That the importation into the United States of any alien for the purpose of prostitution or for any other immoral purpose is hereby forbidden; and whoever shall, directly or indirectly, import, or attempt to import, into the United States, any alien for the purpose of prostitution or for any other immoral purpose, or whoever shall hold or attempt to hold any alien for any such purpose in

pursuance of such illegal importation, or whoever shall keep, maintain, control, support, employ, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, in pursuance of such illegal importation, any alien, shall, in every such case be deemed guilty of a felony, and on conviction thereof be imprisoned not more than ten years and pay a fine of not more than five thousand dollars. Jurisdiction for the trial and punishment of the felonies hereinbefore set forth shall be in any district to or into which said alien is brought in pursuance of said importation by the person or persons accused, or in any district in which a violation of any of the foregoing provisions of this section occur. Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive benefit from any part of the earnings of any prostitute; or who is employed by, in, or in connection with any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes, or where prostitutes gather, or who in any way assists, protects, or promises to protect from arrest any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this act. That any alien who shall, after he has been debarred or deported in pursuance of the provisions of this section, attempt thereafter to return to or to enter the United States shall be deemed guilty of a misdemeanor, and shall be imprisoned for not more than two years. Any alien who shall be convicted under any of the provisions of this section shall, at the expiration of his sentence, be taken into custody and returned to the country whence he came, or of which he is a subject or a citizen in the manner provided in sections twenty and twenty-one of this act. In all prosecutions under this section the testimony of a husband or wife shall be admissible and competent evidence against a wife or husband.

The act of importing alien women for purposes of prostitution was prohibited and made a felony by the Act of March 3, 1875, punishable by imprisonment not exceed-

ing five years and a fine not exceeding five thousand dollars;[12] and by the Act of March 3, 1903, by imprisonment for not less than one nor more than five years, the fine remaining the same. The present act increases the duration of the imprisonment to ten years or less as the court may decide. The attempt to import women for these purposes, ranking here as well as in the Act of 1903 with the felonious act of completed importation, was not made an offense by the Act of 1875; thus in the case of a woman who induced alien girls to accompany her to the United States, causing them to believe that they were accompanying her in the character of domestics, and in which the girls, on being informed before landing of the true purpose of their importation, recoiled at the suggestion of such a course, it was held that, inasmuch as the offense of importing them for the purposes of prostitution was not committed, the woman was guilty of no offense under the Act of 1875.[13] The statutory provision being strictly penal in nature must be strictly construed.[14]

The Indictment.

It was held in an early case brought under the Act of 1875 that the indictment need not set forth the acts constituting the importation;[15] and this ruling was sustained in a later case,[16] holding that an indictment charging that the defendant imported and brought into the Southern District of New York, from Naples, Italy, six women named, for the purposes of prostitution within the United States, the offense was sufficiently charged. No specification of any particular kind of prostitution is required, the word itself being sufficiently definite, nor need the indictment set out the exact place at which the alien is to

[12] 18 Stat. at L. 477.

[13] *In re* Guayde, 112 Fed. 415.

[14] United States v. Bitty, 155 Fed. 938; but not as strictly as the court there construed it. See 208 U. S. 393, 52 Law Ed. 543.

[15] United States v. Johnson, 7 Fed. 453.

[16] United States v. Pagliano, 53 Fed. 1001.

be used.[17] The holding in this case—that there need be no allegation that the importation was *in pursuance* of an agreement made prior to the importation[18]—would have no application to a prosecution under the present act where the fact that the holding was in pursuance of the illegal importation is the main element in the offense which gives Congress the power to penalize it;[19] therefore an indictment thereunder is not defective if it alleges that the holding or attempting to hold alien females imported for prostitution or an immoral purpose was in pursuance of unlawful importation.[20]

Evidence.

The fact of importation of aliens for immoral purposes and of landing or holding them in pursuance thereof may, of course, be proven like any other fact in criminal prosecutions; thus the possession by a person charged with having imported foreign women as prostitutes, and for purposes of prostitution, of the baggage checks of the entire party of six women tends to connect the defendant with the importation, and in the absence of explanation would justify the conclusion that he was engaged in the importation;[21] and evidence regarding the character of the house of assignation kept by defendant, and of acts done at such house after the woman was imported and while she lived there with the defendant, relating to the place named in the indictment as that where the purposes of prostitution was to be carried out, is admissible to show the purposes of prostitution laid in the indictment.[22] As the Acts of 1903 and 1907 make the importation and holding and har-

[17]United States v. Pagliano, 53 Fed. 1001.

[18]*Ibid.*

[19]Keller v. United States, 213 U. S. 138, 53 Law Ed. 737.

[20]United States v. Krsteff, 185 Fed. 201. As to sufficiency of allegation as to time of offense, see United States v. Lair, 195 Fed. 47.

[21]53 Fed. 1001, *supra.*

[22]United States v. Johnson, 7 Fed. 453.

boring in pursuance thereof, not only for purposes of prostitution but for immoral purposes, a felony, the established fact that an alien woman lived in concubinage with the person importing her is sufficient to prove harboring her for an immoral purpose in pursuance of such importation, but the fact that an alien woman came to the United States for an immoral purpose is not to be presumed from the fact that, six months after arrival here she went to live with B as his wife, the passage money having been paid by A.[24]

Section 3 of the Act of February 20, 1907, Held Unconstitutional.

In the case of Keller v. United States,[25] the Supreme Court held that the provision in this section, prior to its amendment by the Act of March 26, 1910, stating that "whoever shall keep, maintain, control, support or harbor in any house or other place, for the purpose of prostitution, or for any other immoral purpose any alien woman or girl within three years after she shall have entered the United States, shall in every such case be deemed guilty of a felony and on conviction thereof be imprisoned not more than five years, and pay a fine of not more than five thousand dollars" was an unconstitutional assumption by Congress of police powers, which it had never been granted. Said the court: "While the keeping of a house of ill fame is offensive to the moral sense, yet that fact must not close the eye to the question whether the power to punish therefor is delegated to Congress or is reserved to the states. Jurisdiction over such an offense comes within the accepted definition of the police power. Speaking generally that power is reserved to the states, for there is in the constitution no grant thereof to Congress. "Were Congress to assume such power, then," said the court, "we should be brought face to face with such a

[24]United States *ex rel.* Huber v. Sibray, 178 Fed. 150.

[25]213 U. S. 138, 53 Law Ed. 737; held not to apply to the territories and particularly to the territory of Hawaii, 3 U. S. D. Ct. Hawaii 481.

change in the internal conditions of this country as was never dreamed of by the framers of the Constitution."

Nature of the Offense.

The acts penalized by this section are three: first, importing or attempting to import alien persons for any immoral purpose; second, holding or attempting to hold any alien for such purpose in pursuance of the importation; third, keeping, maintaining, or harboring in any house or place any alien in pursuance of such importation. The amending section prohibits the holding or maintaining of any alien at all, whereas the section amended made such acts criminal only if committed within three years after the importation. The first act alone renders the felony complete, whereas the second and third are felonious only if done pursuant to the importation, and the attempt to commit any one of the three renders the offender equally liable. Moreover, it is immaterial whether the importation be attempted or accomplished directly or indirectly; the penalty is the same. This provision has been held constitutional and within the power of Congress to enact.[26] Importation, as the term is here used, is deemed to be completed at the port where the alien was landed.[27]

The Importation.

The act of importing or attempting to import into the United States aliens for an immoral purpose, penalized as a felony in this section, must be clearly distinguished, it has been said, from the act of procuring or attempting to bring in alien women for prostitution or any other immoral purpose. The latter act, if proven, renders the offender liable to deportation, and the question of whether or not it has been committed is solely for administrative

[26]United States v. Krsteff, 185 Fed. 201.

[27]*Ibid.* Importation into the Hawaiian Islands is importation into the United States, and it must be shown that at the time of the importation by the defendant it was his purpose that the alien should engage in prostitution in this country. United States v. Meyama, 1 U. S. D. Ct. Hawaii 399.

determination. The existence of the former act involving as it does criminal responsibility, and punishment for the commission of a criminal offense, can only be determined by regular judicial proceedings; and if the accused alien is found guilty deportation after the expiration of the term of imprisonment will follow as a matter of course. But deportation cannot be ordered in the absence of prior conviction. "The right to prosecute criminally and the right to deport are inconsistent as concurrent rights." They cannot both be exercised at the same time. Congress saw the necessity of making the proceedings successive; and it clearly and probably purposely made the second step depend on the result of the first step.[28]

The Holding or Harboring

of the alien, in order to be done in pursuance of the importation, must constitute the final link in a continuous chain of acts participated in directly or indirectly by the offender, connected with the act of importing. It appears that the connection between the importation and the subsequent illegal act must be uninterrupted; thus the mere resumption of illegal intercourse with an alien woman imported by the accused after an interruption of intercourse of two years' duration is not an act done in pursuance of such importation.[29] The provision is obviously levelled not only against individuals who enter into illicit intercourse with aliens they have imported for that purpose, but as well against persons who receive and hold alien women for intercourse with others, provided they themselves have taken part in the importation.

The Keller case shows conclusively that either holding on behalf of others, or harboring for the fulfilment of one's

[28]Lewis v. Frick, 189 Fed. 146, reversed in 195 Fed. 693; and see *ex parte* Pouliot, 196 Fed. 437; but as to the effect of an acquittal on a criminal charge involving an act which would constitute ground for deportation under the Chinese Exclusion Law, see Chin Kee v. United States, 196 Fed. 74.

[29]United States v. Lavoie, 182 Fed. 943.

own desires if done apart from the act of importation, cannot be made the subject of Congressional legislation. Whether such holding or harboring if done with a knowledge of such importation constitutes an act done in pursuance thereof, as that term is used in the statute is still to be judicially determined.

"Any Alien."

Section 3 of the Act of 1907 forbade the importation of any alien woman or girl, or the harboring or maintaining of the same for the immoral purposes set out therein. The prohibition of the amended section applies not only in terms to the importation of women or girls or harboring or maintaining them for such purposes, but to "any alien" thereby including aliens of either sex imported with that end in view. This would seem to bar the door effectively against the importation of go-betweens, procurers, or procurer's assistants, and all members of the male sex whose services might be available in the business of prostitution or in any other immoral connection. It might not, however, be deemed to apply to domestics in such houses, imported for service essentially domestic in nature.

Jurisdiction for Trial and Punishment.

It appears that "any district to or into which such alien is brought" means the district into which she is brought by the vehicle of transportation—not by the act of the party or parties subsequent to her landing; thus the crimes of holding or harboring are not punishable in the Federal District of Washington, when the alien landed at a California port,[30] or in the Federal District of Illinois when landed at New York.[31]

[30]United States v. Lavoie, 182 Fed. 943; see 169 Fed. 890.

[31]*Ex parte* Lair, 177 Fed. 789, reversed in 195 Fed. 47, where it was held that a federal court sitting in another state could not assume as a matter of judicial knowledge that the offense of importing an alien woman into the United States for immoral purposes could not have been committed by the defendant at Chicago within the Northern District of Illinois as against a judgment of the court of the latter district finding that offense had been so committed. United States v. Lair, 195 Fed. 47.

Time Within Which Alien May be Deported.

The section of the Act of 1907 of which this is the amendment provided only that alien females who were found inmates of houses of prostitution and practising prostitution within three years after they entered the United States should be deemed to be unlawfully therein and subject to deportation, and was silent as to the other classes of aliens designated in the present section, which, in removing the time limit altogether, repealed the prior section.[32] The result is that any such alien, if prosecuted and found guilty under this section, may be deported from the United States at any time after entry; and the provision, although attacked as being unconstitutional, has been held valid, and wholly within the power of Congress to enact;[33] and the fact that an alien prostitute has resided in the United States for a longer time than the statutory period of three years provided by the Act of 1907, does not remove her beyond the scope of the amendment.[34] But proceedings must be commenced for acts committed after March 26, 1910.[35]

To What Aliens Applicable.

It will be noted that the wording of this clause is extremely comprehensive, designating as subjects for deportation aliens who shall be found "inmates of or connection with the management of" houses of prostitution; or aliens "employed by or in connection with" any house of prostitution or place frequented by prostitutes. This language, although sweeping, might not be deemed to apply to domestics in such houses receiving pay for work of a purely domestic nature. But even if construed according to the literal wording of the section it would seem to be wholly within the powers of Congress to prescribe.

[33]United States v. Weis, 181 Fed. 860; United States v. Lavoie, 182 Fed. 943; United States v. Williams, 183 Fed. 904; United States v. North German Lloyd, (same v. International Marine Co.), 185 Fed. 158.

[34]United States v. Prentis, 182 Fed. 894, 185 Fed. 967, *supra.*

[35]*Ibid.*

The right of a nation to expel or deport foreigners who have not been naturalized is as absolute and unqualified as the right to prohibit and prevent their entrance into the country.[36] Conversely, as it may exclude them altogether,[37] it may expel them altogether; and particularly would this principle, so rigidly applied to laborers of a nation objectionable for no reason other than that they are laborers of such nation, apply to aliens who choose as their sole means of support a life of prostitution and disgrace tending to degrade the moral standards of the residents of this country with whom they come in contact.

Return of Deported Aliens Made a Misdemeanor.

As it is plainly competent for Congress to declare the act of an alien in remaining unlawfully in the United States to be an offense punishable with fine or imprisonment[38] it is equally within the power of the national legislature to make the return or attempt to return on the part of aliens already barred out and deported an offense punishable as criminal offenses are punishable in the United States. It would seem, however, that the commission of the offense must be regularly established by a criminal trial before a judicial tribunal.[39]

Testimony of Husband and Wife.

Under the acknowledged power of every legislature to prescribe rules of evidence in proceedings adopted for the exercise of the sovereign right to admit or exclude aliens,[40] Congress has further provided that in all prosecutions under this section the testimony of a husband or wife shall be admissible and competent, as against wife or husband.

[36]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[37]Lem Moon Sing v. United States, 158 U. S. 539, 39 Law Ed. 1082.

[38]Wong Wing v. United States, 163 U. S. 228, 41 Law Ed. 140.

[39]Wong Wing v. United States, 163 U. S. 228, 41 Law Ed. 140.

[40]United States v. Fong Yue Ting, 149 U. S. 698, 37 Law Ed. 905; *In re* Moses, 83 Fed. 995.

General Subject Reviewed.

The provisions of this section apply to the importation of Chinese prostitutes as well as to those of every other nationality, notwithstanding that it is provided in section 43 that nothing in this act shall be deemed to repeal the laws relating to the exclusion of Chinese.[41] As is apparent from the wording of the section, it is the importation of women and girls for the purpose of prostitution or for any other immoral purpose which is prohibited. It is to be noted that, although section 2 prohibits the coming to the United States of prostitutes, section 3 does not prohibit the importation of "prostitutes," but of "any alien for the purpose of prostitution or for any other immoral purpose." Although, if it could be shown that prior to importation the alien so imported had at some previous time been a member of the objectionable class, this fact would be entitled to great weight in passing on the point as to whether or not she had been imported to the United States for the prohibited purposes, it would not necessarily render the person importing her subject to the penal provisions of the section unless it were shown beyond a reasonable doubt that he had imported her with immoral ends in view. In order to prove the offense it must be shown that the defendant knowingly and wilfully imported or caused the alien to be imported for the purposes prohibited by the statute;[42] and to prove the holding or attempting to hold in pursuance of such importation it must be shown that the defendant knowingly and wilfully imported or caused the alien to be imported for the purposes shown. To constitute the holding it is not necessary that the defendant should have held her by physical force, but that she should have been detained by him for such purposes, either by physical means directly, or indirectly applied to her by him, or by threats or commands directly

[41]Looe Shee v. North, 170 Fed. 566.

[42]United States v. Giuliani, 147 Fed. 594.

or indirectly made by the defendant calculated to operate to restrain her freedom of action and will. To constitute an attempt to hold the defendant should have made an effort, effectual or ineffectual, by means designed and to a greater or less extent calculated, to effect the object, to hold her for purposes of prostitution or other immoral purposes, with an intention on the part of the defendant at the time thus to hold her.[43]

Where defendant persuaded two alien women to accompany her to the United States in the capacity of domestics, and while on shipboard told them that they were to become prostitutes on their arrival, which they refused to do, it was held to be no offense under the statute of March 3, 1875, which provided no penalty for an attempt to import women for purposes of prostitution.[44] The opposite result would necessarily be reached under the present law.

Sec. 4. That it shall be a misdemeanor for any person, company, partnership, or corporation, in any manner whatsoever, to prepay the transportation or in any way to assist or encourage the importation or migration of any contract laborer or contract laborers into the United States, unless such contract laborer or contract laborers are exempted under the terms of the last two provisos contained in section two of this act.

Sec. 5. That for every violation of any of the provisions of section four of this act the person, partnership, company or corporation violating the same, by knowingly assisting, encouraging, or soliciting the migration or importation of any contract laborer into the United States shall forfeit and pay for every such offense the sum of one thousand dollars, which may be sued for and recovered by the United States, or by any person who shall first bring his action therefor in his own name and for his own benefit, including any such alien thus promised labor or service of any kind as aforesaid, as debts of like amount are now recovered in the courts of the United States; and separate

[43] *Ibid.*

[44] *In re* Guayde, 112 Fed. 415.

suits may be brought for each alien thus promised labor or service of any kind as aforesaid. And it shall be the duty of the district attorney of the proper district to prosecute every such suit when brought by the United States.

Sec. 6. That it shall be unlawful and be deemed a violation of section four of this act to assist or encourage the importation or migration of any alien by promise of employment through advertisements printed and published in any foreign country; and any alien coming to this country in consequence of such an advertisement shall be treated as coming under promise or agreement as contemplated in section two of this act, and the penalties imposed by section five of this act shall be applicable to such a case: *Provided,* That this section shall not apply to states or territories, the District of Columbia, or places subject to the jurisdiction of the United States advertising the inducements they offer for immigration thereto, respectively.[45]

[45]In an opinion rendered March 6, 1907, the Attorney General held that, in dealing with the payment of passage money or other specific assistance to migration of individual aliens, no exception is made in favor of states and no exception exists in favor of any person because he may act as the agent of a state (26 Op. Atty. Gen. 180-192). It was therein held that where aliens came to this country by virtue of representations made by an officer of the State of South Carolina appointed under a statute which expressly permitted him to act as agent for the citizens of that state in the procuring of desirable alien immigrants, they were excludable as contract laborers where the officer visited foreign countries largely or wholly at the expense of said citizens and by advertisement, promises of employment, and prepayment of passage induced them to migrate to South Carolina. 26 Op. Atty. Gen. 180. In a later opinion, rendered March 20, 1907, it was held that the word "person" as used in section 4 of the act did not include a state but did include an officer of a state professing to act under its authority who, by prepayment of the passage of an alien, should induce the latter to migrate by any offer, solicitation, promise or agreement to perform labor; and held further that a state might prepay the passage of an alien immigrant out of its public funds, the advertisement being lawful, and neither the state nor its officers nor anyone else having otherwise solicited or encouraged the migration of said alien. The opinion further held that it is lawful for a state to publish these advertisements to immigration and to state as part of such advertisement the scale of wages generally prevailing within its territory. 26 Op. Atty. Gen. 199. In a later opinion rendered on September 30, 1907, the view was again reiterated that the act contains no exceptions in favor of a state in reference to specific promises of employment to individual immigrants and that the payment of an immi-

The power of Congress to punish any person assisting in the introduction of persons belonging to a class to which entrance into the United States is forbidden was held by the Supreme Court to be a necessary incident to the exer-

grant's passage out of the state funds does not of itself require his exclusion. 26 Op. Atty. Gen. 410. A territorial government, such as Hawaii, is not a person under section 4, nor is it a corporation, association, society, municipality or foreign government under section 2. 27 Op. Atty. Gen. 479, July 26, 1909.

If it is admitted that a state or territory is not a person, and that the prepayment out of public funds of the passage of an alien for the purpose of bringing about his migration to this country does not render him liable to exclusion because his passage has been paid, it is somewhat difficult to perceive why or how the opposite result must follow when the passage has been paid by an individual acting for the State—particularly since the only method in which a state can act is through the intervention of a natural person. Of course, if the person who prepays the passage does not really represent the state, or if the passage is paid for with the money and for the the benefit of private citizens of a state under the cloak of legislative authority, it is plain that the alien should be excluded. In the opinion of March 20, 1907, it is said that a state may prepay the passage of an alien immigrant out of its public funds, "the advertisement being lawful." It is not wholly clear how any advertisement by a state may be other than lawful in view of the fact that section 6 excepts from its prohibition against the encouraging of the importation of immigration of any alien by a promise of employment through advertisements printed and published in any foreign country, the states or territories and the District of Columbia, which advertise the inducements they offer for immigration thereto. Section 6 provides that any person who shall enter in consequence of an advertisement shall be treated as coming under a promise or agreement as contemplated in section 2; and section 2 characterizes as contract laborers aliens who have been induced or solicited to migrate by promises of employment or in consequence of agreements. Just how the act act imposes a check upon states or territories against the introduction of aliens as contract laborers does not plainly appear; and if we assume that the inducements held out in the advertisements published by states or territories in foreign countries are limited to statements of the general beneficial results to be derived from settlement in any particular state or territory, the absence of representations as to specific work for specific wages would seem to have no effect whatsoever on the mischief created as a result of migration coming from such advertisements, to wit, the presence of aliens in this country, who, not being by their coming bound to work for any specific wage may select whatever kind of labor they choose at whatever rates they may elect to accept.

cise of the inherent power of exclusion vested in the United States.[46]

The words "shall forfeit and pay for every such offense the sum of one thousand dollars" repeats the language of section 3 of the Act of February 26, 1885, but that act did not in terms designate the offense as a misdemeanor. Nor did the Act of March 3, 1903, but merely made the acts prohibited unlawful, and provided as a penalty therefor that the transgressor should forfeit and pay for every such offense the sum of one thousand dollars, "which may be sued for.....as debts of like amount are now recovered in courts of the United States."[47]

Method of Bringing Suit.

(a) Civil.

It was held, that under the Act of February 26, 1885, an action of debt to recover a penalty under this statute is the proper form of action, not only by the terms of the statute but also on general principles, for, while the action, being based on a violation of the statute, sounds in tort, yet debt lies for a statutory penalty because the sum demanded is certain.[48] "It must be taken as settled law," says the Supreme Court, in interpreting these sections in the case of Hepner v. United States,[49] "that a certain sum, or a sum which can readily be reduced to a certainty, prescribed in a statute as a penalty for the violation of law, may be recovered by civil action, even if it may also be recovered in a proceeding which is technically criminal. Of course, if the statute by which the penalty was imposed contemplated recovery only by a criminal proceeding, a civil remedy could not be adopted..... But there can be no doubt that the words of the statute

[46]U. S. v. Lees, 150 U. S. 476, 37 Law Ed. 1150.

[47]United States v. M'Elroy, 115 Fed. 252.

[48]Hepner v. United States, 213 U. S. 103, 53 Law Ed. 720.

[49]The Courts of First Instance in the Philippines are held to be courts of the United States for the purposes of such suits. Oehlers v. Hartwig, 5 Phil. Rep. 487.

on which the present suit is based are broad enough to embrace, and were intended to embrace, a civil action to recover the prescribed penalty. It provides that the penalty of $1,000 may be 'sued for' and recovered by the United States or by any 'person' who shall first bring his 'action' therefor 'in his own name and for his own benefit,' 'as debts of like amount are now recovered in the courts of the United States;' and 'separate suits' may be brought for each alien thus promised labor or service of any kind. The district attorney is required to prosecute every such 'suit' when brought by the United States. These references in the statute to the proceeding for recovering the penalty plainly indicate that a civil action is an appropriate mode of proceeding."

Who May Bring Suit.

The words "in his own name and for his own benefit" repeat the language of the Act of March 3, 1903, but were not contained in the Act of 1885. Thus, in a suit brought under that act it was held that a private person could not sue for his own benefit by his private attorney to recover the penalty imposed by this section. While the action could be brought in the name of a private person it was held to be of a nature highly penal, that prosecution by the United States District Attorney was necessary, and that the proceeds of any judgment recovered therein should be paid into the Treasury of the United States; and finally that the Deficiencies Appropriation Act of October 19, 1888, which authorized the Secretary of the Treasury to pay informers any reasonable amount not exceeding fifty per cent. of the amount recovered in consequence of information given by them, made no change in this respect.[50] Thus the law stood up to the enactment of the Act of March 3, 1903, which provided that suit might be brought "by any person who shall first bring his action therefore in his own name and for his own benefit;" which provision is included

[50]Rosenberg v. Union Iron Works, 109 Fed. 844.

in the present section. When "suit" is brought on behalf of the United States the district attorney prosecutes the case.[51]

(b.) Criminal.

In the case of United States v. Stevenson[52] it was contended that the action for a penalty was exclusive of all other means of enforcing the act, and that an indictment would not lie as for an alleged offense within the terms of the act. But it had already been decided by the Supreme Court[53] that a penalty might be recovered by indictment or information in a criminal action, as well as by a civil action in the form of an action for debt. In the Stevenson case the court pointed out that the "statute does not in terms undertake to make an action for the penalty an exclusive means of enforcing it, and only provides that it may be thus sued for and recovered. There is nothing in the terms of the act specifically undertaking to restrict the Government to this method of enforcing the law. It is not to be presumed, in the absence of language clearly indicating the contrary intention, that it was the purpose of Congress to take from the Government the well recognized method of enforcing such a statute by indictment and criminal proceedings." The court, after particularly calling attention to the fact that under the Act of March 3, 1903, the act of importing aliens, or encouraging their importation was merely made "unlawful," whereas the present act, on the contrary, make such acts misdemeanors, proceeds: "Nor can we perceive any purpose in making the change except to manifest the intention of Congress to make it clear that the acts denounced should constitute a crime which would carry with it the right of the Government to prosecute as for a crime..... Congress having declared the acts in question to constitute a misdemeanor, and hav-

[51]Hepner v. United States, 213 U. S. 103, 53 Law Ed. 720.

[52]United States v. Stevenson *et al.*, 215 U. S. 190, 54 Law Ed. 153.

[53]Lees v. United States, 150 U. S. 476, 37 Law Ed. 1150.

ing provided that an action for a penalty may be prosecuted, we think there is nothing in the terms of the statute which will cut down the right of the Government to prosecute by indictment if it shall choose to resort to that method of seeking to punish an alleged offender against the statute."

Nature of the Action.

The case of Lees v. The United States[54] was, says the court in the Hepner case,[55] "a civil action to recover a penalty for importing an alien into the United States to perform labor in violation of the Act of February 26, 1885. In that case the trial court compelled one of the defendants to testify for the United States and furnish evidence against themselves. This court held that that could not be done; saying that 'this, though an action civil in form, is unquestionably criminal in its nature, and in such a case a defendant cannot be compelled to be a witness against himself'—meaning thereby only that the action was of such a criminal nature as to prevent the use of depositions." That case does not "modify or disturb but recognizes the general rule that penalties may be recovered by civil actions, although such actions may be so far criminal in their nature that the defendant cannot be compelled to testify against himself in such actions in respect to any matters involving, or that may involve, his being guilty of a criminal offense."

The burden of proof in such actions is on the Government and a verdict cannot be directed for the Government when there is a reasonable doubt as to whether the defendant has committed the offense of assisting in the importa-

[54] 150 U. S. 476, 37 Law Ed. 1150.

[55] 213 U. S. 103, 53 Law Ed. 720; and it was held in the case of United States v. Banister, 70 Fed. 44, that an action by the United States to recover the statutory penalty for violating the contract labor provisions of the Act of 1885 is an action sounding in tort and hence there is no privilege of exemption from arrest therein.

tion of contract laborers;[56] but a verdict may be directed for the Government where it appears by undisputed testimony that the defendant committed the offense.[57]

Jury Trial.

In the Hepner case[58] the action was one of debt brought by the Government to recover a penalty under sections 4 and 5 for having induced an alien to enter this country for the purpose of performing labor under contract. The court held that the defendant was "of course, entitled to have a jury summoned in this case, but that right was subject to the condition, fundamental in the conduct of civil actions, that the court may withdraw a case from a jury and direct a verdict according to the law if the evidence is uncontradicted and raises only a question of law."

Subjection of Parties to Penalty Other Than That Provided by this Act.

In the case of United States v. Stevenson,[59] the defendants were proceeded against under an indictment which in its second count charged a conspiracy under paragraph 5440 of the Revised Statutes of the United States to commit the offense of assisting alien contract laborers to migrate to this country in violation of the immigration law. The court said "inasmuch as we have already held that Congress in making the assistance of contract laborers into the United States a misdemeanor, has made the same a crime, indictable as such, under the Immigration Act of 1907, it must necessarily follow that if two or more persons, as is charged in the indictment under consideration, conspire to assist such importation, they do conspire to commit an offense against the United States within the terms of paragraph 5440 of the Revised Statutes of the United States..... Nor does it may any difference that

[56]Regan v. United States, 183 Fed. 293.
[57]*Ibid.*
[58]213 U. S. 103, 53 Law Ed. 720.
[59]215 U. S. 200, 54 Law Ed. 157.

Congress has seen fit to affix a greater punishment to the conspiracy to commit the offense than is denounced against the offense itself; that is a matter to be determined by the legislative body having power to regulate the matter."

The Complaint.

What constituted or failed to constitute good and sufficient complaints for violations of the preceding Acts of February 26, 1885, and March 3, 1891, are of little value as precedents owing to the changes which have been made in the law referring particularly as to what acts shall constitute the promise or agreement, which if acted upon by an alien, render the person making them subject to the penalty provided. To give a right of action under the Act of 1885 three things were held to be essential: (1) The immigrant must, previous to becoming a resident of the United States, have entered into a contract to perform or to continue to perform[60] labor or service here; (2) he must actually have migrated to the United States in pursuance of such contract; (3) the defendant must have prepaid his transportation, or assisted therein, and encouraged or solicited his migration knowing that he had entered into this illegal contract.[61] Therefore the omission to state in the complaint that the laborer had been imported, and that the defendant knew when he assisted or encouraged him to enter that he was under a contract to labor here, vitiated the complaint;[62] and where the complaint for the recovery of a penalty failed to show any agreement as to the time or amount or compensation, and showed further that one of the acts necessary to complete the illegal contract or agreement had to be done in the United States the complaint was held to be insufficient.[63]

[60]United States v. Great Falls & C. Ry. Co., 53 Fed. 77.
[61]United States v. Craig, 28 Fed. 795.
[62]United States v. Borneman, 41 Fed. 751.
[63]United States v. Edgar, 48 Fed. 91.

By section 3 of the Act of March 3, 1891, the violation was designated to consist in "assisting or encouraging the migration or importation of any alien by promise of employment through advertisements printed and published in any foreign country," and that any alien coming to the United States in consequence of such advertisement was to be "treated as coming under a contract as contemplated by such act." The stumbling block of a "contract previously entered into" was avoided by this provision, it is true, but it seems that even under this provision any assurance of probable employment, followed up by migration on the part of an alien, had to "be definite as to the kind, the place, and the rate of wages" in order to be a promise of employment within the meaning of the statute. A complaint containing these elements was sufficient to support an action for the penalty prescribed.[64] It was held generally in decisions rendered under the Act of 1891 that the acts of assistance,[65] the character of the labor or service to be rendered, and the elements of the contract should be definitely set out.[67]

Section 4

specifies the two elements which constitute the offense: (1) the prepayment of the transportion or the assistance or encouragement in any way of the importation or migration of an alien; (2) the alien must be a contract laborer, *i. e.,* a person "induced or solicited to migrate to this country by offers or promises of employment, or in consequence of agreements, oral, written, or printed, express or implied, to perform labor in this country."[68] The first elements must always be present and therefore should always be clearly set out in the complaint. The second element is divisible into two: first, that of "offers or promises of em-

[64]United States v. Baltic Mills Co., 124 Fed. 38.

[65]United States v. Tye, 70 Fed. 318.

[67]United States v. Gay, 80 Fed. 254; Moller v. United States, 57 Fed. 490.

[68]Section 2.

ployment," second, "agreements." The complaint should set out clearly the offers or promises and the fact that they were made by the defendant; as for the "agreements," it would seem that their existence must be alleged as such; that is, as a transaction in which the defendant and the alien have both taken a part, and *in consequence* of which the alien has come to the United States. But section 6 provides that "any alien" whose importation or migration has been assisted or encouraged by promise of employment through advertisements printed and published in any foreign country shall be deemed as coming by "agreement" and the penalties imposed by section 5 shall be applicable to such a case. Here it would seem that besides the allegations in number (1), *supra,* the complaint, to be sufficient need allege no more than the fact of the advertisement in the foreign country, that it was published there by the defendant and that it contained a promise of employment.[69]

Section 5

amplifies section 4 by stating that a violation of the same shall consist in "knowingly assisting, encouraging or soliciting the migration or importation of any contract laborer into the United States." Section 6 further provides that it shall be deemed a violation of section 4 "to assist or encourage the migration or importation of any alien by promise of employment through advertisements printed and published in any foreign country;" and imposes the penalties of section 5 for such violation—but only, it appears, if the alien shall migrate *in consequence* of such advertisement.

It is to be noted, however, that no one of these three sections is violated unless (1) the persons solicited come

[69]Declaration in an action for debt to recover a penalty for the importation of alien laborers to Porto Rico in violation of the Act of March 3, 1903, must contain allegation that labor or service is not of the character excepted by section 2. United States v. Michelana, 1 Porto Rico Fed. Rep. 209.

to the United States; (2) they have been induced to migrate by offers or promises of employment, or in consequence of agreements to perform labor. A mere promise or general offer of employment would seem sufficient, provided the alien come to the United States in consequence thereof. The coming in consequence of an actual agreement constitutes the alien a contract laborer under section 2 of the act and renders the party inducing him to come liable under sections 4 and 5. But under section 6 the fact of an advertisement containing a promise of employment that an alien comes to the United States in consequence constitutes of itself the agreement contemplated in section 2; thereby creating, as it were, an artificial agreement arising by the co-existence of two facts: the advertisement and the action of the alien induced by the same, which would seem to render any additional proof of an actual oral or written assent by the parties unnecessary.

The Act of March 3, 1891, amending the Act of February 26, 1885, prohibited the migration of any alien "by promise of employment through advertisements printed and published in any foreign country," and any alien coming to this country in consequence of such an advertisement "shall be treated as coming under a contract as contemplated by such act." "This amendment," says the court in United States v. Baltic Mills,[70] "was intended to dispense with the necessity of proving that there had been a contract with the alien "made previous to the importation or migration," or that there had been any other assistance or encouragement to his migration than a promise of employment..... The word promise is used in the sense in which advertisements commonly promise employment to applicants. Under the former statute there could be no antecedent contract by an advertisement however explicit the terms of the promise might be, because the promise could not, until the alien entered upon its performance,

[70]United States v. Baltic Mills Co., 124 Fed. 38.

become a contract..... The proviso indicates that Congress did not use the word promise in its strict legal meaning, but rather in the sense of an assurance or inducement to encourage aliens to migrate. The proviso withdraws from the operation of the section the inducements advertised by states and immigration bureaus of states offered for immigration to such states. The advertisements do not ordinarily contain promises of employment in the nature of specific proposals, but contain assurances of opportunity for employment and of the remuneration that may be expected..... We are of opinion that any assurance of probable employment definite as to the kind the place and the rate of wages is a promise of employment within the meaning of the statute....."

It is to be observed that the amendment of the Act of March 3, 1891, herein referred to provides that those aliens coming to the Untied States relying on the promise of employment were to be treated as coming under a "contract." This presupposes that the promise made and acted upon should be specific enough to lay the foundations at least of a contractual obligation. This may be inferred from the fact that it was held in the case just cited that the promise must be definite as to "the time, the place, and the rate of wages."

But the present act does not introduce or use the word "contract" except in designating contract laborers as a prohibited class; and in defining the characteristics by which persons belonging to that class are to be distinguished. No reference to the term appears in section 6. Instead of providing, as did the Act of 1891, that a promise acted upon shall be deemed a promise or agreement, for all that appears in the advertisement, there need be no more than a general inducement or lure held out as a bait to foreign laborers containing no specific terms of any kind.[71]

[71]See *Ante*, p. 223 *et seq.*

General Effect of Sections 4, 5 and 6.

The result of the provisions of sections 4, 5 and 6, taken together, would seem to be that an alien coming to perform labor in this country, relying on actual promise or offer, is here in violation of law, and that if he comes in reliance on promises of employment contained in an advertisement of any kind, he is deemed to be coming by agreement, which is likewise prohibited; and that the person from whom the offer, promise, or advertisement emanates commits a misdemeanor subjecting him to prosecution either civilly or criminally.[72]

Sec. 7. That no transportation company or owner or owners of vessels, or others engaged in transporting aliens into the United States, shall, directly or indirectly, either by writing, printing, or oral representation, solicit, invite, or encourage the immigration of any aliens into the United States, but this shall not be held to prevent transportation companies from issuing letters, circulars or advertisements, stating the sailings of their vessels and terms and facilities of transportation therein; and for a violation of this provision, any such transportation company, and any such owner or owners of vessels, and all others engaged in transporting aliens into the United States, and the agents by them employed, shall be severally subjected to the penalties imposed by section five of this act.

It will be noted from what has been said above that section 6, although usually a "contract labor" provision is really directed also against artificial or stimulated, as distinguished from natural immigration. Section 7 has really nothing to do with contract labor—its only connection with the contract labor provisions consists in its proximity to them and in the fact that it looks to section 5

[72]The decision of the Board of Special Inquiry established under the Act of March 3, 1903, giving Koreans the right to land in Hawaii is not a bar to an action for a penalty for bringing them unlawfully into the United States, brought under the provisions of that act. Berger v. Bishop, 1 U. S. D. Ct. Hawaii 405.

for the amount of the penalty imposed as well as the collection thereof. From the very nature of the case it may reasonably be assumed that this provision is more honored in the breach than in the observance; yet the books contain no reported case construing or bearing upon its provisions. But little reflection is needed to see why this is so. Such violations of this section are necessarily perpetrated largely if not altogether in foreign countries; so that it would be usually impossible to secure or introduce in court proof of such violations. It is to be regretted that no opportunity has occurred for raising some of the important and legally interesting questions that generally are mooted by this rather unique piece of legislation in which the effort is made to punish in the courts of this country corporations mostly of foreign origin for the commission of an offense which, while it would in its final results culminate in the United States, is planned and perpetrated by individuals operating in a foreign country.

The offense herein defined must in order to be consummated contain the element of migration by the alien as the result of the transportation companies' publications. The mere fact of such publications being made abroad and outside of the jurisdiction of the United States, aside from being on that account beyond the power of Congress to punish[73] cannot be deemed of itself to constitute the offense penalized by this section.

Sec. 8. That any person, including the master, agent, owner, or consignee of any vessel, who shall bring into or land in the United States, by vessel or otherwise, or who shall attempt, by himself or through another, to bring into or land in the United States, by vessel or otherwise, any alien not duly admitted by an immigrant inspector or not

[73]See United States v. Nord Deutscher Lloyd, 186 Fed. 391; American Banana Co. v. United Fruit Company, 213 U. S. 347, 53 Law Ed. 826; United States v. Nord Deutscher Lloyd, Supreme Court of the United States, October Term, 1911, 56 Law Ed. ——; but Congress can punish the act if it creates a condition operative within this country, as the Supreme Court decision last cited shows. See *post*, p. 257, n.

lawfully entitled to enter the United States shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine not exceeding one thousand dollars, or by imprisonment for a term not exceeding two years, or both by such fine and imprisonment for each and every alien so landed or brought in or attempted to be landed or brought in.

This section is virtually a repetition of the corresponding section of the Act of March 3, 1903. The word person, which is used in the corresponding section (6) of the Act of 1891, prohibiting the landing of "aliens not lawfully entitled to enter the United States" includes transportation companies conducting the business of transportation, by either land or water, so as to make such company liable under the provisions of that section. The officers or servants of the corporation who actually committed, or were responsible for the violation of the section, were held liable to both fine and imprisonment thereunder.

The purpose of this section is to prevent the actual landing on American soil, or the actual bringing to this country, of aliens whose right to land has not been passed on by the proper immigration officers, or who are not lawfully entitled to enter the country. It is, in short, a prohibition against smuggling foreigners into the United States in defiance of immigration regulations. It will be observed that the prohibition is against landing or bringing *into* (not *to*) this country any alien whose right to enter has not been established in the manner provided by the act. But no liability arises from the escape of alien seamen from the vessel [75] and the section of the Act of 1903 corresponding to the one under discussion was construed not to apply to the case of alien seamen who on account of sickness are placed in hospital by their officers on account of their physical unfitness to accompany the vessel on her return voyage.[76]

[75] United States v. Burke, 99 Fed. 895.

Sec. 9. That it shall be unlawful for any person, including any transportation company other than railway lines entering the United States from foreign contiguous territory, or the owner, master, agent, or consignee of any vessel to bring to the United States any alien subject to any of the following disabilities: idiots, imbeciles, epileptics, or persons afflicted with tuberculosis or with a loathsome or dangerous contagious disease, and if it shall appear to the satisfaction of the Secretary of Commerce and Labor that any alien so brought to the United States was afflicted with any of the said diseases or disabilities at the time of foreign embarkation and that the existence of such disease or disability might have been detected by means of a competent medical examination at such time, such person or transportation company or the master, agent, owner, or consignee of any such vessel shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of one hundred dollars for each and every violation of the provisions of this section; and no vessel shall be granted clearance papers pending the determination of the question of the liability to the payment of such fine, and in such event such fine is imposed, while it remains unpaid, nor shall such fine be remitted or refunded: *Provided,* That clearance may be granted prior to the determination of such questions upon the deposit of a sum sufficient to cover such fine and costs, such sum to be named by the Secretary of Commerce and Labor.

Nature of the Violation.

This section differs from the preceding one in that its violation does not constitute a misdemeanor; and the collection of the fine imposed by the statute, if the conditions described are determined administratively to exist, is not to be enforced by a judicial proceeding involving a criminal charge, but administratively through refusal of clearance

[76]Niven v. United States, 169 Fed. 782. The offense is committed in the district where the alien is landed, and not in that to which he may be later brought. United States v. Capella, 169 Fed. 890.

to the vessel. The statute is practically self-executing. The reason for this difference of method is plain. Section 8 defines and penalizes the offense of setting all the safeguards created by the act at naught, and actually causing or attempting to cause aliens to set foot in the United States without having been passed upon by the Immigration authorities—in other words to smuggle in or attempt to smuggle in foreigners. The prohibition in the present section is directed against merely bringing to the United States for examination by the immigration authorities aliens who at the time of embarkation at the foreign port the master knew, or had reason to know, were suffering from disabilities which would mean their exclusion and return on presenting themselves for admission to the United States. In other words, this provision is directed against the practice of shipping disqualified aliens from a foreign port on the chance that at the time of their arrival and examination for admission here, they will either have recovered from the prevailing defect on the way over, or, although still suffering therefrom at time of examination, its existence may escape detection by the examining physician and inspection officers. Insofar as its provisions relate to contagious diseases the section is also intended to prevent the spread of contagion among other passengers on board the ship.[77]

Inasmuch as it is in the power of Congress to forbid the importation of any and all aliens, it is equally within its power to protect this country against the importation of those who are diseased or incompetent; and, in order to better protect the United States and to enforce its laws, it may penalize the infringement thereof by parties the direct fruits of whose negligence is felt on their arrival at our ports, although the negligent act originated within a foreign jurisdiction over which Congress has no control. The provision that the fine shall be imposed if the Secre-

[77]Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320, 53 Law Ed. 1013.

tary of Commerce and Labor is satisfied that the alien's disability or disease could have been detected at the port of departure, cannot however, be correctly said to constitute an attempt to assume jurisdiction over persons for acts of negligence occurring in a foreign country. The fine is the penalty imposed by law on persons who actually bring diseased aliens to the United States, and who knew or should have known at the time of embarkation that under the laws of this country such aliens were not admissible. The act of negligently bringing them to a United States port is consummated in this jurisdiction, and the fact that the continuing negligence which results in the violation of the law originated without the territorial limits of this country, cannot justly be construed to relieve the party responsible therefor from the necessary result of his negligence. And it may be said that although the law relieves from liability those who are shown to have taken in a foreign jurisdiction the precautions prescribed by the statute the true cause of exemption from liability consists in the fact that under those circumstances the diseased alien cannot be said to have been negligently brought to our ports.[78]

The Secretary of Commerce and Labor the Sole Judge of the Prior Existence of the Disability.

The fine is to be imposed "if it shall appear to the satisfaction of the Secretary of Commerce and Labor" that the alien was afflicted and that the existence of the disability might have been detected at the time of foreign embarkation. By Rule 28 of the department[79] it is provided that a certificate shall be prepared by the medical examiner in the case stating whether in his judgment the existence of such disability or disease might have been detected at the foreign port. And where the only point at issue before the

[78]See United States v. Nord Deutscher Lloyd, 223 U. S. 118, 56 Law Ed. ——.

[79]Immigration rules.

Secretary is the medical question, the determination of the examining surgeon would seem, for all practical purposes, final. It may be said, however, that the decision of the medical officer is relevant only insofar as it goes to show that a competent physician could or could not, at the time of the alien's embarkation, have discovered the existence of the disease. Inasmuch, however, as there is nothing in the act to indicate that there is put upon the transporter the obligation of an absolute guarantor as to the condition of the alien at the time of embarkation it would seem that questions of fact, such as the availability of a competent surgeon, or evidence of belief or of good cause to believe on the part of the master that he was employing a competent surgeon when as a matter of fact he was not, should be proper subjects for the Secretary's consideration.

The provision in the Act of March 3, 1903, that the imposition of the fine shall be conditional on the result of the medical examination at the port of arrival, and not providing for a hearing on the part of the owners of the vessels prior to the imposition of the fine and refusal of clearance papers until the fine is paid was held to be due process of law, and wholly within the power of Congress to enact.[80] The imposition of the fine under this provision is an exercise of executive power with which Congress may constitutionally vest the Secretary of Commerce and Labor, as the act committed is not a criminal offense, or even a misdemeanor, and the exaction of a fine does not constitute the infliction of a punishment.[81] But ship owners are not subject to the penalty for bringing diseased stowaways who came on board without the knowledge of the master[82] or for bringing in an alien seaman who deserted into United States territory and while there developed symptoms of

[80]Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320, 53 Law Ed. 1013; and see *ante*, p. 132.

[81]Oceanic Steam Navigation Co. v. Stranahan, 214 U. S. 320, 53 Law Ed. 1013.

[82]Cunard Steamship Company v. Stranahan, 134 Fed. 318.

insanity of which no evidence had hitherto been manifested.[83]

Rule 28 of the Immigration Regulation above referred to reads as follows:

1. *Medical certificate.*—Whenever an arriving alien is found to be afflicted with any of the diseases or disabilities mentioned in section 9, and in the judgment of the medical examiner such disease or disability existed at the time of foreign embarkation and might have been detected by means of a competent medical examination at such time, he shall so certify.

2. *Notice to master, etc.*—Upon the receipt of such a certificate the officer in charge shall promptly serve upon the master, agent, owner or consignee of the vessel upon which said alien arrived a notice to the effect that the ascertained facts indicate that a fine should be imposed under section 9; that he will be allowed sixty days' time from the date of service of the notice within which to submit evidence or be heard in reference to this matter; and that in the meantime the vessel on which the alien arrived will be granted clearance papers, upon condition that he deposit with the collector of customs, prior to the time of sailing, the sum of $100 as security for the payment of such fine, should it be imposed.

3. *Service of notice.*—Such notice shall be prepared in triplicate. The original shall be served on the master, agent, owner or consignee of the vessel either by (1) delivering it to him in person or (2) leaving it at his office or, whenever the immigration officer in charge finds either of these methods of service inconvenient, by (3) mailing it to him. When service is made by delivery, it shall be admitted in writing upon the duplicate and triplicate and the admission witnessed by the server. If admission be refused, or in case of service by either of the other methods, the server shall note the method and date of service on the

[83] Frank Waterhouse & Co. v. United States, 159 Fed. 876.

duplicate and triplicate. The duplicate shall be retained by the immigration officer in charge. The triplicate shall be delivered to the collector of customs for the district wherein the port of arrival is located, who shall withhold clearance papers until the deposit is made.

4. *Submission of evidence and report.*—If said deposit be made, further proceedings shall be suspended during said period of sixty days or until earlier submission or evidence to show why said fine should not be imposed. Such evidence, if submitted, shall be forwarded to the Bureau, together with the medical certificate and the duplicate notice, and the officer in charge shall at the same time present his written views as to whether the fine should be imposed. If within sixty days no evidence has been submitted, or as soon as it is known that the fine will not be contested, the officer in charge shall report the facts to the Bureau.

5. *Action on decision.*—Upon receipt of departmental decision the collector of customs shall be notified of its terms. If the fine is imposed, the amount deposited as security shall be accounted for by the collector. If the fine is not imposed, he shall return such amount.

Refusal of Clearance Papers.

The provision on this subject is somewhat different from the corresponding section in the Act of 1903, which provided merely that no vessel should be cleared while any fine imposed remained unpaid. The result of the change of language would seem to be that vessels may now be refused clearance pending the determination of the fact whether or not a fine has been incurred, as well as after imposition of the fine and pending payment thereof. Clearance may, however, be granted prior to the determination of these questions on deposit of a sum sufficient to cover both the fine and "costs." Section 9 of the Act of March 3, 1903, limited the application of the fine to cases where aliens afflicted with a loathsome or dangerous contagious

disease were brought to the United States; but this section extends the liability to cases where idiots, imbeciles, epileptics, or persons affected with tuberculosis are brought to this country. Under the Act of 1903 the liability was held not to have been incurred by bringing in a diseased alien stowaway, who came aboard without the knowledge of the master at a foreign port.[84] Under earlier acts the liability of the master was held to be limited to duties connected with the importation of alien immigrants.[85] Granting that his duties under this section extend to all aliens, to hold him liable for the presence at the ports of this country of alien stowaways would be to make him an absolute insurer under the act; a construction which it is thought neither the language nor the intent of the provision calls for. Nor does the master's liability extend to a case where, during the time an alien seaman was a member of a vessel's crew, he deserted to United States territory, and while there, developed insanity, there having existed no evidence of insanity or of any indications from which it might have been reasonably inferred that he was of unsound mind during the time of his service as a seaman.[86]

Sec. 10. That the decision of the board of special inquiry, hereinafter provided for, based upon the certificate of the examining medical officer, shall be final as to the rejection of aliens affected with tuberculosis or with a loathsome or dangerous contagious disease, or with any mental or physical disability which would bring such aliens within any of the classes excluded from admission to the United States under section two of this act.

This section adds one more class to those enumerated in the corresponding section of the preceding act—aliens afflicted with tuberculosis.

The subject of the finality of the board's decision herein provided can be best considered in connection with section

[84]Cunard S. S. Co. v. Stranahan, 134 Fed. 318.

[85]United States v. Sandrey, 48 Fed. 550.

[86]Frank Waterhouse & Co. v. United States, 159 Fed. 876.

25 of the act, which provides that the "Boards of special inquiry shall be appointed.....for the prompt determination of all cases of all immigrants detained.....under the provisions of law..... Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported..... That in every case where an alien is excluded from admission .....the decision of the appropriate immigration officers, if adverse....., shall be final, unless reversed on appeal to the Secretary of Commerce and Labor; but nothing in this section shall be construed to admit of any appeal in the case of any alien rejected as provided for in section 10 of this act."

This last limiting clause does not appear in section 25 of the preceding act. It appears to have been inserted to prevent raising the question that the right of appeal from the board provided in this section should be read to apply to section 10.

Following the provision of section 10, the board's decision has been held final as to the existence of the disease.[87] A later case[88] held that the word "final" in section 10 of the Act of 1903 is used in a restricted sense and does not deprive those who are parties to the cases described in that section of the privilege of appeal so unqualifiedly conferred by section 25 of that act. The final clause in section 25 of the present act "shows that the exclusion of aliens as provided for in section 10 from the privilege of appeal granted in all cases in section 25 was thought desirable by Congress."[89] But the board's decision is not final under this section when not based exclusively on the certificate of the medical officer making the examination, and where there was raised the additional question of whether the person excluded was in fact subject to exclusion under the

[87] *In re* Neuwirth, 123 Fed. 347.

[88] Rodgers v. United States, 157 Fed. 381.

[89] *Ibid.*

Act of 1903.[90] An expression (*obiter*) by the Supreme Court seems to sustain the view adopted by the court in the decision above referred to[91] that the finding of the Board of Inquiry under the Act of March 3, 1903, was appealable even where it was to the effect that the applicant had trachoma, which the petition designated as a dangerous contagious disease—the very words of section 10.[92] However, the limiting clause in section 25 of the present act makes the decision of the board absolutely final in the classes of cases therein designated—provided that the excluding decision is based on the medical certificate.[93]

Finality of the Decision of Boards of Special Inquiry Rejecting Aliens Mentally or Physically Disqualified.

All aliens suffering from mental or physical disabilities referred to in this section are, with certain exceptions to be discussed later, excluded from the right of appeal to the Secretary of Commerce and Labor granted other aliens who are not thus afflicted, provided that the excluding decision of a board of special inquiry is based on the certificate of the examining medical officer. Rule 17 follows the section in providing that when the decision of the board is based on such certificate there is no right of appeal. Subdivision 4 of Rule 17[94] reads as follows: No appeal lies where the decision of a board of special inquiry, based solely on the certificate of the examining medical officer rejects an alien because either (1) he is afflicted with tuberculosis or a loathsome or dangerous contagious disease, or (2) he is an idiot or an imbecile or an epileptic or is insane or feeble-minded, or (3) he has been insane within five years previously or has had two or more attacks of insanity at any time previously, or (4) he has any *mental* defect which may affect his ability to earn a living or render him likely to become a public charge.

[90] *In re* Nakashima, 160 Fed. 842.
[91] Rodgers v. United States, *In re* Nakashima, supra.
[92] Zartarian v. Billings, 204 U. S. 170, 51 Law Ed. 428.
[93] United States v. Rodgers, 182 Fed. 274.
[94] Immigration Rules, pages 33-34.

In a note subjoined to these two subdivisions[95] it is stated "where a medical certificate shows that an alien is afflicted with the disabilities mentioned in subdivision 4, the Board is virtually compelled to base its decision upon that certificate, because whether or not an alien is so afflicted is purely a matter of medical science."

It would seem that the only question that determines the existence of the right of appeal is one of fact as to whether the certificate is the actual basis of the decision. It is true that a decision rendered by the board excluding an alien on the ground of being a consumptive, or affected with a loathsome or dangerous contagious disease, must, in the nature of things, be based on the medical certificate affirming the fact, for the reason that trustworthy evidence of disease reveals itself as such only to the experienced eye of the medical practitioner. On the other hand insanity often—though by no means always—presents itself as a fact to the layman with the same conviction as it does to the expert alienist; and occasionally absolutely conceals its existence from the one as well as from the other. The detection of epilepsy on the contrary, except in the moment of demonstration, would seem to be the work of the physician rather than of the layman.

But it is safe to say that idiocy, imbecility or feeble-mindedness, in the common acceptance of those terms, reveal themselves as readily to the observation of the layman as to that of the physician; and it is equally safe to say that the members of a board of special inquiry, in reaching an unfavorable decision as to the admission of an idiot, an imbecile, or a person of feeble mental faculties could do so as conscientiously and readily in the absence of the medical examiner as they could determine whether or not, in a given case, a blind man stood before them. It seems doubtful whether, in such cases as these, where as an almost invariable rule the mental infirmity is only

[95]Immigration Laws, Rules of November 15, 1911, 1st Ed., p. 34.

too clearly apparent, an opinion could be rendered based entirely on the certificate of the medical officer.

Yet, that portion of the note to subdivisions 4 and 5 above cited provides in effect that in rendering decisions in such cases—those where a medical certificate shows that the alien is an idiot, an imbecile, feeble-minded, or has been insane within 5 years previously, or has had two or more attacks at any time previously or has any mental defect which may affect his ability to earn a living or render him likely to become a public charge—the Board of Special Inquiry is virtually forced to base its decision on that certificate.

If this provision is to be taken as a rule to which members of boards must adhere in passing on the cases of aliens so afflicted it is tantamount to a declaration that no such aliens shall in any case be allowed to appeal from the excluding decision of the boards. It is not denied that in rare and doubtful cases of this description the members of boards may be justified in throwing the responsibility of deciding on the medical examiner, thus in effect basing their decision on his certificate. But no authority, it is thought, is conferred by section 10, or by any other section of this act, whereby the Secretary of Commerce and Labor is empowered to lay down as a matter of law that the decisions of boards rendered in such cases are to be perforce based on the medical certificate, and that consequently persons found to be afflicted as above stated are barred from the right of appeal. The alien is entitled to the honest opinion of the inspecting officers wholly untrammeled by any instructions or rules not authorized by the statute.[96]

The note on page 34 of the Immigration Rules already referred to continues: "The cases intended to be covered by subdivision 5" (where the excluding decision is based solely on a medical certificate showing the existence of a physical infirmity not such as to preclude the possibility

[96] *In re* Kornmehl, 87 Fed. 314.

of the alien's admission on bond) "stand on a somewhat different footing. It applies only to physical disabilities other than tuberculosis and loathsome or dangerous contagious diseases..... Whether or not these will affect ability to earn a living is partly a medical and partly a practicable question. If in such instances the board cares to rely *solely* on the medical certificate and to exclude, the alien is thereby deprived of his right of appeal, but he may still request admission on bond. Such is the combined effect of sections 10 and 26, to carry out which subdivision 5 is intended. Instances of this kind, however, are likely to be rare because in case of physical defects of the character mentioned the Board is not confined to the medical certificate but may consider all the surrounding circumstances; and where upon all the facts, including the medical certificate it decides that the alien is suffering from a physical defect which will affect his ability to earn a living the right of appeal exists."

In a foot-note to the former rule 6 of the Immigration Laws and Regulations of July 1, 1907, 13th Edition, May 4, 1911, it was left to Boards of Inquiry to determine of their own judgment in connection with the medical certificate whether or not the alien has been insane within five years previous to his arrival, or has had two or more attacks of insanity previously, or whether he had any mental or physical defect which may affect his ability to earn a living or render him likely to become a public charge. As appears from the quotations made above this provision is omitted in the departmental rules and regulations now in force—unfortunately, it is thought, since it seems not unreasonable to take the view that any case coming within the classification covered by the old rule just cited is more than likely to involve a mixed question of fact and medical science; and the most natural interpretation of the provisions of section 10 of the act would seem to be that it was the intent of Congress not to deprive an alien of the right of appeal generally granted by

section 25 when the Board's decision was based no matter in how small a degree on questions of fact.

The conclusion to be drawn from an examination of the rules appears to be

(*1*) That when the physical defect from which the alien suffers is tuberculosis or a loathsome or dangerous contagious disease the decision of the board must be based on the medical certificate, and that consequently the alien has no right of appeal; but where the physical defect is one which may affect the liability of the alien to earn a living the question to be determined is a practical one quite as much as a medical one and that the Board is not therefore bound to base its decision on the certificate of a medical officer. If based thereon, however, the effect is to deny the alien the right of appeal.

(*2*) That when the mental defect from which the alien is suffering is idiocy, imbecility, epilepsy, insanity or feeble-mindedness, the decision of the Board must be based on the certificate of the examining medical officer, and the right of appeal is therefore denied; and that the same result follows when the mental defect is not one of those mentioned, and is certified to by the examining surgeon as being such as to be likely to render the alien a public charge or affect his ability to earn a living, or where previous insanity or previous attacks thereof are certified to by the examining surgeon.

While the wording of section 10 might seem to imply that even in case of tuberculosis or other loathsome or other dangerous contagious diseases it would be possible for a Board to render an opinion independent of the medical certificate, rule 17, insofar as it applied to such cases, appears in the matter of general practice and application, at least, to follow the law. But for the reasons already given it seems that for the Secretary of Commerce and Labor to insist—if indeed the presence of the foot-note to the present rules and regulations in force is to be considered as mandatory in effect—that in the case of aliens

classified in subdivison 4 of rule 17 of these regulations excluding opinions must as a matter of law be based on the accompanying medical certificate is to step outside the authority conferred on him for the promulgation of rules to exact due enforcement of the act.

Sec. 11. That upon the certificate of a medical officer of the United States Public Health and Marine Hospital Service to the effect that a rejected alien is helpless from sickness, mental or physical disability, or infancy, if such alien is accompanied by another alien whose protection or guardianship is required by such rejected alien, such accompanying alien may also be excluded, and the master, agent, owner, or consignee of the vessel in which such alien and accompanying alien are brought shall be required to return said alien and accompanying alien in the same manner as vessels are required to return other rejected aliens.

Rule 5 of the Immigration Rules provides that where in the estimation of the appropriate immigration officials an alien likely to be rejected as helpless under section 11 arrives accompanied by one or more aliens whose protection or guardianship he will, if rejected, require, one of such accompanying aliens (preferably a relative or natural guardian) shall be detained and the determination of his case may be postponed until after that of the alien whom he accompanies

Sec. 12. That upon the arrival of any alien by water at any port within the United States it shall be the duty of the master or commanding officer of the steamer, sailing or other vessel having said alien on board to deliver to the immigration officers at the port of arrival lists of manifests made at the time and place of embarkation of such alien on board such steamer or vessel, which shall, in answer to questions at the top of said list, state as to each alien the full name, age, and sex; whether married or single; the calling or occupation; whether able to read or write; the nationality; the race; the last residence; the

name and address of the nearest relative in the country from which the alien came; the seaport for landing in the United States; the final destination, if any, beyond the port of landing; whether having a ticket through to such final destination; whether the alien has paid his own passage or whether it has been paid by any other person or by any corporation. society, municipality, or government, and if so, by whom; whether in possession of fifty dollars, and if less, how much; whether going to join a relative or friend, and if so, what relative or friend, and his or her name and complete address; whether ever before in the United States, and if so, when and where; whether ever in prison or almshouse or an institution or hospital for the care and treatment of the insane or supported by charity; whether a polygamist; whether an anarchist; whether coming by reason of any offer, solicitation, promise, or agreement, express or implied, to perform labor in the United States, and what is the alien's condition of health, mental and physical, and whether deformed or crippled, and if so, for how long and from what cause; that it shall further be the duty of the master or commanding officer of every vessel taking alien passengers out of the United States, from any port thereof, to file before departure therefrom with the collector of customs of such port a complete list of all such alien passengers taken on board. Such list shall contain the name, age, sex, nationality, residence in the United States, occupation, and the time of last arrival of every such alien in the United States, and no master of any such vessel shall be granted clearance papers for his vessel until he has deposited such list or lists with the collector of customs at the port of departure and made oath that they are full and complete as to the name and other information herein required concerning each alien taken on board his vessel; and any neglect or omission to comply with the requirements of this section shall be punishable as provided in section fifteen of this Act. That the collector of customs with whom any such list has been deposited in accordance with the provisions of this section, shall promptly notify the Commissioner-General of Immigration that such list has been deposited with him as provided by regulations to be issued by the Commissioner-General of Immigration with the approval of the Secretary of Commerce and

Labor: *Provided,* That in the case of vessels making regular trips to ports of the United States the Commissioner-General of Immigration, with the approval of the Secretary of Commerce and Labor, may, when expedient, arrange for the delivery of such lists of outgoing aliens at a later date: *Provided further,* that it shall be the duty of the master or commanding officer of any vessel sailing from ports in the Philippine Islands, Guam, Porto Rico, or Hawaii to any port of the United States on the North American Continent to deliver to the immigration officers at the port of arrival lists or manifests made at the time and place of embarkation, giving the names of all aliens on board said vessel.

Like the corresponding section of the preceding act this section provides for delivery by the master of the vessel to immigration officers of lists or manifests of alien passengers at the time and place of their embarkation on board such vessel. As to what the manifest shall contain with regard to each alien so embarking there exists but slight difference between this and the corresponding section of the previous act; the only additional requirement being that the name and address of the nearest relative in the country from which the alien came shall appear in the manifest. But it also requires the filing of a similar manifest or list of alien passengers taken out of the United States, the object being to collate statistics on emigration of foreigners for comparison with those regarding immigration. In order to collect the emigration statistics promptly and with the least possible interference with outbound vessels the department has promulgated a regulation[97] whereunder the required data are required to be written on a detachable coupon of the ticket sold outgoing alien passengers, such coupon being detached from the ticket as the alien goes aboard the ship and filed with the immigration officials in lieu of "list or manifest."

It has been held that for the agent of a steamship com-

[97]Revised Statistical Rule 19.

pany to ticket an alien desirous of coming to the United States at Halifax, stating that he could come to this country without extra charge would constitute a violation of this section on the part of the steamship officers so doing.[98]

Sec. 13. That all aliens arriving by water at the ports of the United States shall be listed in convenient groups, and no one list or manifest shall contain more than thirty names. To each alien or head of a family shall be given a ticket on which shall be written his name, a number or letter designating the list in which his name, and so forth, is contained, and his number on said list, for convenience of identification on arrival. Each list or manifest shall be verified by the signature and the oath of (or) affirmation of the master or commanding officer, or the first or second below him in command, taken before an immigration officer at the port of arrival, to the effect that he has caused the surgeon of said vessel sailing therewith to make a physical and oral examination of each of said aliens, and that from the report of said surgeon and from his own investigation he believes that no one of said aliens is an idiot, or imbecile, or a feeble-minded person, or insane person, or a pauper, or is likely to become a public charge, or is afflicted with tuberculosis or with a loathsome or dangerous contagious disease, or is a person who has been convicted of, or who admits having committed a felony or other crime or misdemeanor involving moral turpitude, or is a polygamist or one admitting belief in the practice of polygamy, or an anarchist, or under promise or agreement, express or implied, to perform labor in the United States, or a prostitute, or a woman or girl coming to the United States for the purpose of prostitution, or for any other immoral purpose, and that also, according to the best of his knowledge and belief, the information in said lists or manifests concerning each of said aliens named therein is correct and true in every respect.

This section is a repetition of the corresponding section of the Act of 1903 except insofar as the incorporation in section 2 of certain additional excluded classes has made

[98]United States v. Fielding, 175 Fed. 290.

necessary additions to this section regarding the scope of the oath of the ships' officers regarding the status, physical, mental, moral or otherwise of the aliens whose names are given in the manifest.

Sec. 14. That the surgeon of said vessel sailing therewith shall also sign each of said lists or manifests and make oath or affirmation in like manner before an immigration officer at the port of arrival, stating his professional experience and qualifications as a physician and surgeon, and that he has made a personal examination of each of the said aliens named therein, and that the said list or manifest, according to the best of his knowledge and belief, is full, correct, and true in all particulars relative to the mental and physical condition of said aliens. If no surgeon sails with any vessel bringing aliens the mental and physical examinations and the verifications of the lists or manifests shall be made by some competent surgeon employed by the owners of the said vessel.

Subdivision 5 of Rule 2 provides that, when there is not a surgeon on board, the certificate (unverified) of a reputable surgeon located at the point of embarkation or at the last port of call in the form appearing on the reverse side of the manifest, shall be a sufficient proof of compliance with the requirements of section 14 that when no surgeon sails with the vessel bringing aliens, their mental and physical examination shall be made by some competent surgeon employed by the owners of the said vessel.

Sec. 15. That in the case of the failure of the master or commanding officer of any vessel to deliver to the said immigration officers lists or manifests of all aliens on board thereof, as required in sections twelve, thirteen, and fourteen of this Act, he shall pay to the collector of customs at the port of arrival the sum of ten dollars for each alien concerning whom the above information is not contained in any list as aforesaid: *Provided,* That in the case of failure without good cause to deliver the list of passengers required by section twelve of this Act from the master or commanding officer of every vessel taking alien passengers

out of the United States, the penalty shall be paid to the collector of customs at the port of departure and shall be a fine of ten dollars for each alien not included in said list; but in no case shall the aggregate fine exceed one hundred dollars.

This section contains as to the master or commanding officer of incoming vessels the same provision as the corresponding section of the preceding act regarding the imposition of a penalty of ten dollars for each alien concerning whom the information required in sections 12, 13, and 14 is not provided. In addition it provides a similar penalty for the violation of so much of section 12 of this act as related to vessels taking alien passengers out of the United States.

The obligation of the master of a vessel bringing aliens to the United States is twofold with respect to manifests: First, to deliver manifests of all aliens; Second, to see that they contain the information required by sections 12, 13 and 14. He is at liberty to group the names of aliens and the data regarding them but must not put more than 30 names on a single sheet. Failure to present a manifest with regard to any one of the aliens, or failure to give regarding any one of them the information required renders him liable to a fine of ten dollars in each instance.

It would seem that in the case of all outgoing passengers one general list is all that is required. The penal provision in section 15 does not apparently penalize the failure to deliver the list, but failure to include information therein as to each outgoing alien, inasmuch as the amount of the fine is, to a limited extent, made to depend on the number of aliens not included therein. As the amount of the penalty to be imposed is to be determined by this method, the section would not in terms appear to have provided any penalty for mere failure to deliver the list. And it seems questionable whether under this proviso the master or commanding officer of an outgoing ves-

sel transporting departing aliens, who had made a complete list of such aliens, but had failed to deliver it to the collector of customs at the port of sailing, could be subjected to any penalty. Still it may be said in connection herewith that failure to deliver the list would amount to a failure to deliver the required information as to each and every alien included, although in no case could the amount of the fine exceed $100.00.

It may be added in this connection that the act imposes no penalty on the master for giving incorrect manifests of the aliens on board where such manifest includes all such aliens and purports to give the required information as to each.[99]

The procedure adopted by the department for collecting fines for failure to manifest as prescribed in this section is as follows:

1. *As to incoming manifests.* Written notice setting forth wherein the lists or manifests are deficient shall be mailed to or served upon the master of the vessel or the agent of the transportation company concerned, and 60 days from the time of such service allowed within which to place before the immigration officer in charge evidence to show why the statutory penalty should not be collected. If no objection is made, it shall be collected forthwith by the appropriate collector of customs. If objection be made, the full record shall be forwarded to the Bureau and no further action taken until receipt of further notice from the Bureau.

2. *As to outgoing manifests.* Action similar to that prescribed in the preceding subdivision shall be taken where there is a failure to furnish complete manifests of emigrants; but for such failure in the case of a *departing* vessel the total fines collected shall not exceed $100.

Sec. 16. That upon the receipt by the immigration officers at any port of arrival of the lists or manifests of in-

[99]United States v. Four Hundred and Twenty Dollars, 162 Fed. 803.

coming aliens provided for in sections twelve, thirteen, and fourteen of this Act, it shall be the duty of said officers to go or to send competent assistants to the vessel to which said lists or manifests refer, and there inspect all such aliens, or said immigration officers may order a temporary removal of such aliens for examination at a designated time and place, but such temporary removal shall not be considered a landing, nor shall it relieve the transportation lines, masters, agents, owners, or consignees of the vessel upon which said aliens are brought to any port of the United States from any of the obligations which, in case such aliens remain on board, would, under the provisions of this Act, bind the said transportation lines, masters, agents, owners, or consignees: *Provided,* That where a suitable building is used for the detention and examination of aliens the immigration officials shall there take charge of such aliens, and the transportation companies, masters, agents, owners, and the consignees of the vessels bringing such aliens shall be relieved of the responsibility for their detention thereafter until the return of such aliens to their care.

This section, is to all practical purposes, a re-enactment of the corresponding section of the Act of 1903.

The "temporary removal of aliens for examination" is not a landing.

An alien so removed is left in the same position as regards his right to land as if he had never been removed from the steamship;[100] and the detention for such examination by departmental officers cannot give rise to the claim that the alien so detained, although the minor child of a naturalized alien, but who has never before been in the United States, has acquired a "dwelling" in this country, as the term is used in Sec. 2172 of the Revised Statutes.[1]

Among the obligations imposed upon transportation lines and the officers or agents of the vessel bringing the

[100]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; *In re* Way Tai, 96 Fed. 484.

[1]Zartarian v. Billings, 204 U. S. 170, 51 Law Ed. 428.

alien to the United States is that of detaining him on board, prescribed by section 19 of the act. Section 19 of the Act of March 3, 1903, expressed the same obligation and penalized the "neglect to detain" aliens on board, while the words used in the present act are "fail to detain." Section 10 of the Act of March 3, 1891, used the words "neglect to detain" in this connection. In construing that act it was held, in the case of Warren v. United States,[2] that the word "neglect" as here used must be considered the equivalent of "fail" or "omit." This construction was justly criticised in the case of United States v. Spruth,[3] and the decision was overruled in the case of Hackfelt v. United States.[4] The court there said: "If by this requirement it was intended to make the shipowner or master an insurer of the absolute return of the immigrant at all hazards, except when excused by *vis major* or inevitable accident, it would seem that Congress would have chosen words more indicative of such an intention, and instead of using a word of uncertain meaning would have affixed the penalty in cases where the owner or master omitted or failed to safely return the immigrant illegally brought here..."

It would seem that by substituting in this section the word "fail" for "neglect" Congress acted with direct reference to this decision. Still, while it is possible that by the use of the word "fail" Congress intended to make the persons named insurers at all hazards of such detention and return, such a construction is for more reasons than one open to considerable doubt. In the first place, as the court says in the Hackfelt case, "it is difficult to see how a shipowner could insure the return of such immigrants without such confinement or imprisonment as may result in great hardship to that class of individuals who may them-

[2] 58 Fed. 559.

[3] 71 Fed. 678.

[4] 197 U. S. 442, 49 Law Ed. 826; and see United States v. Pavy, 193 Fed. 1006.

selves have had no intention to violate any law of this country." It is difficult to impute to Congress the intention to have all immigrants kept in irons by the master of the vessel, if it appears to him necessary to do so, in order at all hazards to detain them;[5] still more difficult to impute the intent to penalize the master, if, having taken such extreme precaution, any or all of the prisoners were to break their chains and escape to United States territory. Yet this would logically follow were the effect of the section to make the master an absolute insurer of such detention.

But there is a second consideration which militates against such a view. Section 16 contains the proviso "that where a suitable building is used for the detention and examination of aliens, the immigration officials shall there take charge of such aliens, and the transportation companies, masters, owners, agents, and consignees of the vessels bringing such aliens shall be relieved of the responsibility of their detention thereafter until the return of such aliens to their care." Herein consists at least the implication that where the aliens are temporarily beyond the control of the persons named, the latter are thus far relieved of their responsibility; evidently on the natural assumption that, being beyond their control, no question of "failing" to detain them can arise. It would seem to follow that, in the absence of express and unmistakable language making the persons named responsible as absolute insurers of such detention and return at all hazards, which Congress has not used, the section may be well construed to mean that when the power of detention

[5]The Attorney General has expressed the opinion that the master has the right to put an alien in irons in order to prevent him from unlawfully leaving the vessel; but that this may only be done as a last resort and where it appears that nothing else will prevent the unlawful landing of such alien. 24 Op. Atty. Gen. 531, November, 1902. The captain of a ship on which the alien has been placed for return is not liable for his escape, if at the time he was himself on shore, and others were in charge of the ship. United States v. Pavy, 193 Fed. 1006.

is, for reasons not arising from any act or omission of the master, beyond his control, the failure to detain will not subject him to the penalties imposed by the section. The question of the master's or owner's liability for the escape of aliens while within the control of the immigration officers has been passed on judicially both under the Immigration and Chinese Exclusion acts; it being held under the Act of March 3, 1891,[6] and under the Chinese Exclusion Act of July 5, 1884,[7] that they were not liable for such escape.

Sec. 17. That the physical and mental examination of all arriving aliens shall be made by medical officers of the United States Public Health and Marine-Hospital Service, who shall have had at least two years' experience in the practice of their profession since receiving the degree of doctor of medicine and who shall certify for the information of the immigration officers and the boards of special inquiry hereinafter provided for, any and all physical and mental defects or diseases observed by said medical officers in any such alien, or, should medical officers of the United States Public Health and Marine Hospital Service be not available, civil surgeons of not less than four years' professional experience may be employed in such emergency for such service, upon such terms as may be prescribed by the Commissioner-General of Immigration under the direction or with the approval of the Secretary of Commerce and Labor. The United States Public Health and Marine Hospital Service shall be reimbursed by the immigration service for all expenditures incurred in carrying out the medical inspection of aliens under regulations of the Secretary of Commerce and Labor.

Sec. 18. That it shall be the duty of the owners, officers, or agents of any vessel of transportation line, other than those railway lines which may enter into a contract as provided in section thirty-two of this Act, bringing an alien to the United States to prevent the landing of such alien in the United States at any time or place other than

[6]Hackfeld & Co. v. United States, 141 Fed. 9.

[7]United States v. Seabury, 133 Fed. 983.

as designated by the immigration officers, and the negligent failure of any such owner, officer, or agent to comply with the foregoing requirements shall be deemed a misdemeanor and be punished by a fine in each case of not less than one hundred nor more than one thousand dollars or by imprisonment for a term not exceeding one year, or by both such fine and imprisonment; and every such alien so landed shall be deemed to be unlawfully in the United States and shall be deported as provided in sections twenty and twenty-one of this Act.

By this section the duty is imposed on the persons designated therein of affirmatively preventing the landing of such aliens as they may transport to this country within the territory of the United States at any time and place other than is designated by immigration officers. This section is more stringent in its provisions than the corresponding section of the preceding Act of 1903 which made it the duty of the officers and owners of vessels bringing such aliens only "to adopt due precautions" to prevent landing. In this act it is the "negligent failure to prevent" such landing which is prohibited and penalized, whereas the prior act does not penalize the failure to adopt due precautions, but the actual landing or permitting to land. One who makes it possible for an alien to land by omitting due precautions to prevent it permits him to land within the meaning of the penal clause of the Act of 1903;[8] but this does not apply to the ordinary case of a sailor deserting while on shore leave,[9] nor to the case of a sick alien seaman placed in a hospital through inability to leave for home on the vessel on which he came.[10]

Sec. 19. That all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the country whence they respectively came on the vessels bringing them. The cost of their maintenance

[8]See Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

[9]*Ibid.*

[10]Niven v. United States, 169 Fed. 782.

while on land, as well as the expense of the return of such aliens, shall be borne by the owner or owners of the vessels on which they respectively came; and if any master, person in charge, agent, owner, or consignee of any such vessel shall refuse to receive back on board thereof, or on board of any other vessel owned or operated by the same interests, such aliens, or shall fail to detain them thereon, or shall refuse or fail to return them to the foreign port from which they came, or to pay the cost of their maintenance while on land, or shall make any charge for the return of any such alien, or shall take any security from him for the payment of such charge, such master, person in charge, agent, owner, or consignee shall be deemed guilty of a misdemeanor and shall, on conviction, be punished by a fine of not less than three hundred dollars for each and every such offense; and no vessel shall have clearance from any port of the United States while any such fine is unpaid; *Provided,* That the Commissioner-General of Immigration, with the approval of the Secretary of Commerce and Labor, may suspend, upon conditions to be prescribed by the Commissioner-General of Immigration, the deportation of any alien found to have come in violation of any provision of this act, if, in his judgment, the testimony of such alien is necessary on behalf of the United States Government in the prosecution of offenders against any provision of this act: *Provided,* That the cost of maintenance of any person so detained resulting from such suspension of deportation shall be paid from the "immigrant fund" but no alien certified, as provided in section seventeen of this act, to be suffering from tuberculosis or from a loathsome or dangerous contagious disease other than one of quarantinable nature shall be permitted to land for medical treatment thereof in any hospital in the United States, unless with the express permission of the Secretary of Commerce and Labor: *Provided,* That upon the certificate of a medical officer of the United States Public Health and Marine Hospital Service to the effect that the health or safety of an insane alien would be unduly imperiled by immediate deportation, such alien may, at the expense of the "immigrant fund," be held for treatment until such time as such alien may, in the opinion of such medical officer, be safely deported.

This section deals mainly with the obligations of shipowners arising in connection with the detention and return of aliens on being again confided to their care after having been excluded by the immigration officers; and is to this extent to be distinguished from the provisions of section 8, which prohibit generally the unlawful smuggling in of aliens, those of section 9, which prohibit the bringing to United States ports of disabled aliens, and those of section 18 which are directed against the landing of aliens without the knowledge of the masters or owners after the vessels bringing them have arrived in port, but before examination by immigration officials.

"or shall fail to detain them thereon, or shall refuse or fail to return them to the foreign port from which they came,"

The words "fail to detain" and "failure to return" (aliens brought to the United States) take the place of the expressions "neglect to detain" and "neglect to return" used in the preceding act. This distinction has already been pointed out and made the subject of comment in considering section 16. In construing the corresponding section of the Act of March 3, 1891,—where the word "neglect" is used—the provision was held inapplicable where the facts showed that an alien was carried from his own home by mistake to the United States, refused admission thereto, returned to the master for detention, and left the ship without the latter's knowledge or consent;[11] and it has been held (obiter) not to apply to a case where the aliens were returned to the care of the master, and where in spite of an agreement with him after being returned on board to ship back on the return voyage, and of having had their pay then and there increased by the captain, they got back ashore by stealth, contrary to the intention of the

[11]Moffitt v. United States, 128 Fed. 375.

master, evading a watch kept on board by the captain's orders.[12] In discussing this provision in connection with section 16 attention has already been called to the fact that the Supreme Court has decided that shipowners were not under the earlier acts to be considered as absolute insurers of such return.[13]

Refusal to pay maintenance of rejected aliens.

Refusal to pay the cost of the maintenance of aliens brought to the United States in violation of law is made a misdemeanor, the commission of which is punished with a three hundred dollar fine, as is the making of any charge for returning such aliens or the taking of any security from them by way of payment. As used in this section the word "charge" has been held to mean some overt act committed in the United States by which the charging party manifests its purpose to demand the money charged from the party charged, and does not include any subsequent relations which are the consequences of the act; and similarly "taking security" for the payment of the charge of deportation has been held not to be a continuous act following the person who took the money by way of security wherever he goes.[14] These prohibitions constitute the only practical means at the command of Congress to protect aliens brought here unlawfully by transportation

[12]United States v. Hemet, 156 Fed. 285.

[13]Hackfeld & Co. v. United States, 197 U. S. 442, 49 Law Ed. 826; and see United States v. Almond, 6 Phil. Rep. 306; United States v. Pavy, 193 Fed. 1006.

[14]United States v. Nord Deutscher Lloyd, 186 Fed. 391. Reversed in United States v. Nord Deutscher Lloyd, 223 U. S. 188, 56 Law Ed. ——. MR. JUSTICE LAMAR said: "'When, therefore, in Bremen the alien paid and the defendant received the 150 rubles for a return passage, they created a condition which was operative in New York..... This retention of the money with such intent'" (its retention by the defendants in New York with intent to make charge and secure payment for the alien's return passage-"'was an affirmative violation of the statute. The company could not take the aliens back free of charge, as required by law, and at the same time retain the fare covering the same trip.'"

companies, as well as the United States itself, from contributing to the expense attendant on the act of transportation, the responsibility for which is justly sought to be placed upon those who, for the sake of the passage money, choose to run the risk of being detected in the attempt to introduce undesirable or disqualified aliens into this country in violation of its laws.

Suspension of deportation for purpose of taking testimony.

With regard to this point Rule 25 provides that: Where the deportation of an alien is stayed so that he may testify concerning violations of the immigration law, the case must be promptly reported to the United States attorney with request that if he decides to institute proceedings he either take the deposition of the alien or secure a court order for his detention as a witness. In either event the Bureau shall be promptly informed as to any action taken hereunder.

Landing for Hospital Treatment.

In the former act this section prohibited the landing for medical treatment in the hospitals of the United States of any alien certified to be suffering with a loathsome or dangerous disease. By the present section this rule may be relaxed at the discretion of the Secretary of Commerce and Labor, and only by his express permission may the treatment of such persons be allowed.

Rule 19 contains the following provisions on this point:

Application for hospital treatment. No application for hospital treatment of aliens afflicted with tuberculosis or a loathsome or dangerous contagious disease will be considered unless submitted promptly to the immigration official in charge at the port of arrival (by him to be forwarded to the Bureau), and unless in addition such application shows (*1*) That detention or landing for hos-

pital treatment is necessary to meet the ends of justice and humanity; (2) that the applicant or some one on his behalf is willing and able to deposit at once a sum sufficient to pay for treatment for 60 days, or less if a shorter time is estimated as that within which a cure possibly may be affected, and to furnish bond in a penalty of not less than $300 providing that at least 15 days prior to the expiration of said period a further deposit will be made sufficient to cover cost of treatment for 30 days additional and a remittance of a similar amount 15 days prior to the expiration of the period covered by this deposit, and so on until the alien is cured and permanently landed or the case otherwise disposed of, the bond also to provide that a sum sufficient to defray the cost of forwarding the alien to final destination will be furnished when and if needed, and, in the event the alien is a person who, from infancy or other cause, will require an attendant to accompany him to final destination if landed, or to the country of origin if eventually deported, that such an attendant or funds sufficient to defray cost of employing one will be furnished. The same time shall be allowed for filing applications for hospital treatment as is allowed for the filing of appeals.

If on arrival the condition of an alien is such that, in the estimation of the immigration official in charge, the dictates of humanity require that he shall be given immediate hospital treatment, such treatment shall be accorded.

Report and certificate to accompany application. The immigration official in charge who forwards the application shall furnish a transcript of the board hearing, and a certificate of a Public Health and Marine Hospital surgeon showing the character and extent of the alien's affliction and estimating the duration of treatment required to effect a cure; and shall state whether or not the preliminary deposit has been made, and whether or not he thinks the bond required will be forthcoming in the event

that the application is granted; and shall express his views of the case.

Action if requirements not observed. If the application is granted and there is a failure to observe the terms of the bond exacted, report thereof shall be made to the Bureau, to the end that the condition of the bond may be enforced and the alien deported. Any balance of a deposit remaining unexpended when the alien is cured or released shall be returned to the depositor. The cost of hospital treatment may be charged against the deposit from the time the petition was filed.

Admission to hospital not a "landing." The landing or detention of an alien under this rule shall not be construed in any manner to alter the status of the alien with reference to his right to enter or remain in the United States, nor in any manner to affect the liability of transportation companies under section 9 or Rules 4 and 26.

The expenses of aliens thus landed shall be borne by the alien and not by the transportation companies.[15]

Landing of Insane Aliens for Hospital Treatment.

The provision that in such cases the expense shall be borne by the government is reiterated in subdivision 4 of Rule 26; and subdivision 2 of Rule 19, following the act, provides that if on arrival the condition of an alien is such that in the estimation of the immigration official in charge, the dictates of humanity require that he shall be given immediate hospital treatment, such treatment shall be accorded.

Detention for taking testimony.

This is a re-enactment of the corresponding provision in the preceding act. Rule 25 provides that where the deportation is stayed so that he may testify concerning violations of the immigration law, the case must be promptly reported to the United States attorney with the

[15]Subdivision 4, rule 26; Opinion Comptroller, January 15, 1908.

request that if he decides to institute proceedings he either take the deposition of the alien or secure a court order for his detention as a witness. In any event the Bureau shall be promptly informed of any action taken hereunder.

Subdivision 4 of Rule 26 provides that in such cases the expense of detention shall be borne by the government.

Sec. 20. That any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing, shall, upon the warrant of the Secretary of Commerce and Labor, be taken into custody and deported to the country whence he came at any time within three years after the date of his entry into the United States. Such deportation, including one-half of the entire cost of removal to the port of deportation, shall be at the expense of the contractor, procurer, or other person by whom the alien was unlawfully induced to enter the United States or if that can not be done, then the cost of removal to the port of deportation shall be at the expense of the "immigration fund" provided for in section one of this act, and the deportation from such port shall be at the expense of the owner or owners of such vessel or transportation line by which such aliens respectively came: *Provided,* That pending the final disposal of the case of any alien so taken into custody he may be released under a bond in the penalty of not less than five hundred dollars with security approved by the Secretary of Commerce and Labor, conditioned that such alien shall be produced when required for a hearing or hearings in regard to the charge upon which he has been taken into custody, and for deportation if he shall be found to be unlawfully within the United States.

This section deals with the deportation of aliens who have entered the United States in violation of law, and those who have become public charges from causes existing prior to landing. The corresponding section of the Act of 1903 provided that such persons might be deported within two years after arrival; whereas under the present

act they may be taken into custody and deported on the warrant of the Secretary of Commerce and Labor within three years thereafter.

Arrest and Deportation on Warrant.

Aliens who are found by the Secretary to be unlawfully in the United States whether because of unlawful entry in the first place or because found to have become public charges from causes existing prior to the landing are subject to the general provisions of Rule 22 which requires that before the warrant of arrest shall issue there shall have been made a thorough investigation on the part of officers applying for the issuance thereof; that the application must state facts bringing the alien within one or more of the classes subject to deportation after entry and that the proof of these facts shall be the best that can be obtained.

Subdivision 3 of Rule 22 provides that in cases involving the question of whether or not the alien has become a public charge from causes existing prior to landing the application in such cases must be accompanied by a medical certificate containing the following:

(a) An explicit statement that the alien is a public charge, where, and how, and, if in an institution, the date of admission thereto.

(b) A full and accurate statement of the alien's disabilities, mental or physical; also whether or not a complete cure is possible; and if yes, when; and if not, whether partial cure may be expected; and to what extent the alien will thereafter be self-supporting. Also, in insane cases, recovered or apparently recovered from the attack, whether new attacks are to be expected.

(c) Whether or not the disabilities described constitute the sole causes why the alien is a public charge; any other causes to be stated.

(d) Whether the causes which render the alien a public charge existed prior to landing or arose subsequent

thereto, and in the former case the reasons in detail justifying such a conclusion.

Where the Bureau so directs, the application must be further accompanied by a complete copy of the clinical or general history of the case as shown by the hospital records, including the statements of relatives and friends. If deemed advisable by the local immigration officer, it may be further accompanied by the certificate of an officer of the Public Health and Marine Hospital Service in relation to the alien's condition.

The term "likely to become a public charge" has been held to include the likelihood of becoming a criminal as well as a pauper;[16] thus there is no reason why, if, after the entry of the alien and within the statutory period there is proof that such a condition existed prior to his entry, he should not be subject to deportation under this section.

Expense of Deportation—how and by whom paid.

Under the prior act the expense of the deportation "including one-half of the inland transportation to the port of deportation" is to be borne by the "person bringing such alien into the United States, or if that cannot be done then at the expense of the Immigrant Fund." Under the present section the "deportation including one-half of the entire cost of removal to the port of deportation shall be at the expense of the contractor, procurer, or other person by whom an alien was induced to enter the United States." In case this cannot be done the cost of removal to the port of deportation shall be at the expense of the appropriation for the enforcement of the immigration law; but, whereas under the prior act the owners or owner of the vessel were not under the expense of returning such alien from the port of deportation, in case the person who brought him to the United States could be found, by this act such expense shall in such case be borne by the owners of the vessel or transportation line by which such alien

[16]United States v. Williams, 175 Fed. 274.

came to the United States. Neither this section nor the following is retroactive to the extent of imposing on the ship owner liability to pay for the return of an alien woman who was brought here under no disability when the act of 1903 was in force, and, in July 1910 was found practicing prostitution and was thus subject to deportation under the provisions of the Act of March 26th of that year.[17]

The term "one-half of the entire cost of removal to the port of deportation" substitutes the term "one-half of the cost of inland transportation to the port of deportation" used in the corresponding section of the Act of 1903. The entire cost of removal might well be deemed to mean the sum of the expense involved in the removal of the alien. The provision of the earlier statute was held to mean "the cost of carrying the alien from the inland place where he may be detained to the port of deportation."[18] The effect of the present provision seems to be that the person chargeable with the expense must bear not only one-half of that involved by the act of removing the alien to the port but one-half of the expense incurred by the officer or officers in arriving at the inland place.

The provision that such alien may be released under bond in the penalty of not less than $500, with security approved by the Secretary of Commerce and Labor, conditioned on his appearance for hearing with regard to the charge upon which he has been taken into custody, or for deportation, is new, and an addition to the preceding section.

Release under bond.

Subdivision 5 of Rule 22 provides that the amount of any bond under which an arrested alien may be released shall be $500, unless different instructions are given by the Department, which, also shall, prior to release, approve

[17]United States v. North German Lloyd, 185 Fed. 158.
[18]United States v. Hamburg American Line, 159 Fed. 104.

the bond, except that the approval of the local United States attorney as to form and execution shall be sufficient where, to avoid delay, the immigration officer in charge deems it proper to submit the bond to such attorney for approval. Aliens who are unable to give bail shall be held in jail only in case no other secure place of detention can be found.

Sec. 21. That in case the Secretary of Commerce and Labor shall be satisfied that an alien has been found in the United States in violation of this act, or that an alien is subject to deportation under the provisions of this act or of any law of the United States, he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came, as provided by section twenty of this act, and a failure or refusal on the part of the masters, agents, owners, or consignees of vessels to comply with the order of the Secretary of Commerce and Labor to take on board, guard safely, and return to the country whence he came any alien ordered to be deported under the provisions of this act shall be punished by the imposition of the penalties prescribed in section nineteen of this act: *Provided,* That when in the opinion of the Secretary of Commerce and Labor the mental or physical condition of such alien is such as to require personal care and attendance, he may employ a suitable person for that purpose, who shall accompany such alien to his or her final destination, and the expense incident to such service shall be defrayed in like manner.

Section 21 provides for the deportation of any alien—that is aside from the class to which the provisions of the preceding section particularly apply—in case the Secretary of Commerce and Labor is satisfied that such alien is in the United States in violation of this act, or that such alien is subject to deportation under the provisions of this act or of any law of the United States, such alien to be taken into custody and returned to the country whence he came as provided by section 20.

The provision as to aliens subject to deportation under

the provisions of any law of the United States does not appear in the act of 1903. The penalties of the former corresponding section have been maintained in this act to apply to vessels whose masters, agents, owners, or consignees have failed to comply with the order of the Secretary of Commerce and Labor relative to such deportation, being the same as the penalties imposed by section 19.

This section contains a new provision to the effect that when a deported alien requires personal care and attendance the Secretary of Commerce and Labor may employ a suitable person to attend such alien on his or her return. In Rule 23 the Secretary has provided, at the request of many of the largest transportation companies, a means whereby this special care and attention may be provided by officers of the vessels, reports thereof being made to the Secretary—an arrangement which obviates the necessity of placing government attendants or nurses on the vessels. But the Secretary reserves the right to do so in case a steamship company fails to comply fully with the rule made in its interests.

Rule 23 which deals with this subject contains the following provisions:

(*1*) Where the immigration authorities find that an alien about to be deported (whether after rejection by a board or on Department warrant) requires special care and attention, the steamship company concerned must provide such care and attention as his condition calls for, not only during the ocean voyage, but also as hereinafter provided during the foreign inland journey.

(*2*) The alien shall be delivered to the master or first or second officer of the vessel by which deportation is to occur, together with the appropriate form, also a duplicate carbon of sheet "A" thereof. The receipt and sheet "A" shall (except as to signature) be filled out by an immigration officer. The receipt attached to sheet "A" shall be signed by the ship's officer to whom the alien has been delivered and returned forthwith to the immigration offi-

cer making delivery. Sheets "B" and "C" shall be retained by the ship's officer and in due course filled out by the agents or persons therein designated and by them returned by mail as therein provided.

(*3*) From the foreign port of debarkation the steamship company must forward the alien to destination in charge of a proper custodian (all expenses to be borne by such company), except only in cases where foreign public officials decline to allow such custodian to proceed and themselves take charge of the alien, which fact must be shown by signing the form provided in the lower half of sheet "C". Where the foreign public officials take charge not at the port of debarkation, but at an interior frontier, both forms on sheet "C" must be filled out, the former in relation to the inland journey as far as such frontier.

(*4*) Whenever, without excuse satisfactory to the immigration officer in charge at the port of embarkation, a steamship company has failed for a period of 90 days after departure of an alien requiring special care and attention under this rule to comply with any of the terms thereof, including where it has failed to return sheets "B" and "C" properly filled out, such immigration officer shall forthwith report this fact to the Bureau, and thereafter the Secretary of Commerce and Labor will without further notice and during such period as he shall determine, exercise his right (sec. 21) to employ suitable persons to accompany to their final destinations aliens deported on a vessel of such steamship company requiring special care and attention. Instructions as to compensation of such attendants, their mode of travel, their right of access to the alien during the ocean voyage, and other necessary matters will be given in each case as it arises.

The Warrant of the Secretary of Commerce and Labor.

The right of the Secretary to issue the warrant is not impaired or taken away by the fact that it is directed against aliens who have been allowed to land under the

unanimous decision of a board of special inquiry;[19] and the warrant need not be signed by the Secretary, but is valid if signed by the Assistant Secretary.[20] A warrant of arrest alleging that an alien is unlawfully in the United States in that he had been convicted or had admitted having committed prior to landing a felony or other crime or misdemeanor involving moral turpitude will support an order of deportation based, first, on such conviction, second, on the fact of having admitted the commission of such crime or crimes, and third, on the fact that he was likely to become a public charge. The court held that this last conclusion was wholly within the power of the Secretary to draw, even though not alleged in the warrant, inasmuch as the allegations of criminality alleged in the warrant and duly proven were of themselves sufficient to justify such a conclusion. The Court further found that the alien was advised at the outset that the authorities meant to rule thereon as a ground for deportation and that there was no requirement either in the act or in the promulgated regulations that the warrant must state the alleged grounds.[21]

On the other hand, it has been held that a warrant of arrest stating "that the said alien is a member of the excluded classes in that he imported a woman for an immoral purpose and that he has been convicted of or admits having committed a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States," is insufficient, not being specific in that it did not state who the woman was or for what immoral purpose she was imported, whether the arrested alien was convicted of or merely admitted the commission of a crime, or whether it was either a crime or misdemeanor involving moral turpitude"[22] and to the same effect, where

[19]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.

[20]United States v. Redfern, 180 Fed. 506.

[21]United States v. Williams, 175 Fed. 274.

[22]United States *ex rel.* Huber v. Sibray, 178 Fed. 144.

the warrant charged that the alien woman was a member of the excluded class because she entered for an immoral purpose, where the warrant did not specify what the immoral purpose was.[23] But on the contrary it has been held that a warrant is sufficient which charges that the alien is a member of the excluded classes in that he is a contract laborer, and was induced or solicited to migrate to this country by an offer or promise of employment or in consequence of an agreement not written or printed express or implied, to perform manual labor in the United States, the warrant not being criminal in its nature.[24] Of the three decisions just cited, the first two are wholly irreconcilable with the third. The first two were reversed by the Circuit Court of Appeals[25] not, however, on the question of the sufficiency of the warrant, but on the ground that the aliens being enlarged on bail at the time the writ of habeaus corpus issued, its issue was legally unjustifiable, there being no "restraint."

The test of sufficiency given in the Sibray cases "that it should give to the alien sufficient information of the specific act or acts... so that he can offer testimony in refutation of the charge at the hearing" is at least limited by the Court in the Williams case,[26] which drew attention to the fact that the applicant "was advised at the outset of the hearing" of the ground on which the authorities intended to rule. At the same time, it must be admitted that the two decisions are not in *pari passu* as to the requisites of the warrant, particularly with regard to the necessity of specifying the particular crime or misdemeanor the conviction or admission of commission of which forms the ground of deportation. And it has been held that a warrant of arrest will not support an order

[23]United States *ex rel.* Statlichnitzer v. Sibray, 178 Fed. 150.

[24]*Ex parte* Michele, 188 Fed. 449.

[25]United States *ex rel.* Hahn, Statlichnitzer and Kupples, v. Sibray, 185 Fed. 401.

[26]*Supra;* United States v. Williams, 175 Fed. 274.

for deportation where the warrant charges violation of the act of Congress approved Feb. 20, 1907, with specifications which appear to be within the expressed terms of section 2 thereof to the effect that the alien entered as a "contract laborer," when it was proved that, as a matter of fact the alien entered the United States long prior to the Act of February 20, 1907, under the Act of March 3, 1903, which does not prohibit the entrance of such laborers;[27] nor where it is issued for the purpose of deporting an alien domiciled in the United States on the ground that he imported an alien woman for immoral purposes when he has already been tried and acquitted of the crime in the courts, as the right to prosecute criminally and the right to deport are inconsistent as concurrent rights and the Act of March 26, 1910 provides that the right to deport is dependent on a prior conviction.[28] Deportation may however be based on a warrant describing a Chinese woman as "Sally Doe," where it appears from her own testimony that she is a Chinese prostitute and not entitled to remain in the United States.[29]

As to what the warrant of the Secretary of Commerce and Labor shall contain, and as to how far the facts contained therein shall apprise the alien arrested thereon of the facts on which his arrest is based, the act contains no provision whatsoever. It may be said, on the one hand, that it is no more than fair that the warrant state those facts in such a way that the alien is enabled thereby to apprehend the meaning of its contents and be enabled to prepare a defense against the proceedings instituted against him with a view of depriving him of a home perhaps already established, of association with his friends and relatives, and, above all, of the benefits of the institutions of the country which he has chosen as the

[27]Davies v. Manolis, 179 Fed. 818.

[28]Lewis v. Frick, 189 Fed. 146, reversed in 195 Fed. 693; and see *ex parte* Pouliot, 196 Fed. 437 in accord with the reversing decision and sustaining the Secretary's warrant of arrest.

[29]Wong Chun v. United States, 170 Fed. 182.

land of his domicile, and for which he has given up that former home to which he has no desire to return. On the other hand, it may be said with regard to proceedings brought under the immigration act that they are not criminal by nature, and that therefore the strict requirements of criminal procedure have no application; that they, like proceedings under the Chinese exclusion acts, are simply the mode provided by Congress for the removal to their own country of aliens who have no right to be here. There is no especial significance in the word "warrant"; the term "order" might have been used with equal accuracy in describing the Secretary's authority for arresting an alien found here in disregard of the immigration law. But the fact that the word "warrant" is so frequently used in criminal proceedings, and that strict requirements are observed in criminal procedure regarding its form and contents, seems, perhaps, to have unconsciously swayed those courts which have insisted upon a more or less strict conventionality of statement and conformance to the requirements of criminal procedure; all of which indicates that they viewed a proceeding of this nature more in the light of a prosecution for crime—as far as the actual effect on the deportee is concerned—than would seem to be justified either by the nature of the proceedings or by the decisions of the Supreme Court.

The three year period.

Section 20 of the Act of 1903 provided that the alien falling thereunder should be deported within two years. "The statute says he shall be deported within two years, not that deportation proceedings shall be brought or commenced, or that he shall be held or arrested for deportation within that period"[30] following a similar holding under the Act of March 3, 1891.[31] The present section says "taken into custody and deported," and section 21

[30]Botis v. Davies, 173 Fed. 996.

[31]*In re* Russomanno 128 Fed. 528.

uses the words "taken into custody and returned." Yet these sections have been interpreted to mean that in a case where the three year period will have passed since the entry of such alien before deportation is physically possible, but not where the proper proceedings have been instituted, the Secretary of Commerce and Labor still has jurisdiction.[32] It has been held that it begins to run from the date of the last entrance of the alien[33] and on the other hand that it begins to run from the time of his first entrance into the United States[34] and that the Government is entitled to the whole of the last day and in addition thereto a reasonable time in which to deport.[35] Which of these two views is the correct one seems to depend on the meaning of the term "entry" taken in connection with the general purpose and intent of the immigration acts. While the proceedings, as has been shown,[36] are not penal in nature, the effect upon the alien deported under such provisions is practically so; therefore there is good ground for as liberal an interpretation thereof as would not do violence to the true meaning and intent of the statute, taken as a whole. Moreover the effect of the provisions of both sections, not only on the alien but on the transportation companies or agencies which have brought him to this country, is punitive, and this would seem to afford additional ground for a strict construction thereof. Yet it should be borne in mind that the obvious purpose of these sections is not so much to place a hard and fast limitation on the period within which the Secretary of Commerce and Labor must deport persons falling thereunder, as to grant him the full extent of the three-year period in which to satisfy himself as to the existence of facts and circumstances, often unavailable at the time

[32]United States v. Redfern, 180 Fed. 506.
[33]United States v. Hook, 166 Fed. 1007.
[34]Redfern v. Halpert, 186 Fed. 150.
[35]United States v. International Mercantile Marine Co., 186 Fed. 669.
[36]*Ante*, p. 6.

of entry, which may constitute either direct or inferential proof of the lawfulness or unlawfulness of the presence of the parties—and, after having so determined, to institute or refrain from instituting proceedings, as the circumstances may require. The issuance of the Secretary's warrant within the three-year period is sufficient to bring about the legal deportation of an alien found to be here within three years after his arrival, although the execution of the order of deportation cannot take place within that period because of the incarceration of the alien running over the period as the result of his conviction for a crime committed in the United States;[37] and as the decision of board of special inquiry permitting an alien to enter is not final it will constitute no bar to his deportation within the three-year period.[38]

Persons to whom applicable.

The aliens subject to arrest and deportation within the three year period are those who enter the United States and, while aliens, become public charges from causes existing prior to landing, or those otherwise subject to deportation under this act or any law of the United States. It follows that a contract laborer who entered the United States as such before the act went into effect, and under the Act of 1903, which did not exclude contract laborers, is not unlawfully in the United States under this or the preceding act.[39] The possession of a passport issued by a foreign government to an alien otherwise excludable is not a bar to the operation of the section with regard to him;[40] nor it has been held, can an alien prostitute who left the United States on March 7, 1908, after a residence of more than three years, and returns in June,

[37]Matsumura v. Higgins, 187 Fed. 601.

[38]Pearson v. Williams, 136 Fed. 734.

[39]Botis v. Davies, 173 Fed. 996; Davies v. Manolis, 179 Fed. 818.

[40]United States v. Redfern, 180 Fed. 506.

1908, claim exemption from the effects of this section on being arrested here in September, 1909.[41] This section was held likewise to apply to the case of a Chinese woman who was admitted to the United States in 1906 as the wife of an American citizen, but was arrested within the three year period, after the passage of the act, for being engaged in acts of prostitution. Two facts in that case demanded the particular attention of the court; the claim that she assumed the status of her husband, and was thus not subject to the operation of the act, and that, as section 43 of the act specifically maintains in force the Chinese exclusion acts, she was subject to their operation only and not to that of the immigration act. But the court held that, although married to an American citizen, being Chinese she was not, under the naturalization laws of the United States, capable of naturalization, and that, whatever her rights were, they were not those of an American citizen; second, that section 43 did not limit the application of the present act to aliens other than Chinese.[42] There was also some question as to whether or not the alleged marriage was bona fide. The government was not of course bound by the decision of admission based on the ground that the marriage was made in good faith and could at any time thereafter, if a mock ceremony was found to have been entered into for the sole purpose of avoiding the effect of the exclusion or immigration laws, have the alien deported if found to be unlawfully in the United States.

Application of section to Chinese.

Section 43 contains the proviso that "this act shall not be construed to repeal, alter, or amend existing laws relating to the immigration or exclusion of Chinese persons, or persons of Chinese descent." The courts have

[41] *In re* Hoffman, 179 Fed. 839; and see United States v. Sprung, 187 Fed. 903.

[42] Looe Shee v. North, 170 Fed. 566.

consistently held that the existence of disabilities which exclude aliens generally from admission into the United States under this act apply with equal force to aliens of Chinese nationality;[43] it follows that the rights of an alien *as a Chinese merchant* cannot be brought in question in proceedings before the Department of Commerce and Labor against him in the capacity of an alien violating the Immigration Act of February 20, 1907;[44] nor can a Chinese alien who has entered this country in violation of the Immigration Laws claim as of right a trial before a United States Court as provided in the Chinese Exclusion Acts.[45] Nevertheless, while the District Court, in the case of *Ex parte* Wong You et al.[46] was particularly emphatic in holding that Chinese persons unlawfully in the United States are, equally with all other aliens, subject to deportation under sections 20 and 21 of the immigration act, the Circuit Court of Appeals for the second circuit overruled that decision.[47] The exact question at issue, decided in the affirmative by the lower court and in the negative by the Circuit Court of Appeals was whether or not sections 20 and 21 apply to Chinese laborers. The appellate court held that laborers of that race, "being subject to removal according to the provision of the Chinese exclusion laws, are not subject to removal in accordance with the procedure of the immigration act....Chinese laborers are excluded by the Chinese act. All other Chinese persons, not being excluded by that act are subject to the provisions of the Immigration Act. A Chinese laborer, with or without a loathsome disease cannot enter at all. The Chinese act covers the case..." The ground of the decision, therefore, was the old maxim of law *"generalia specialibus non derogant."*

The provision of section 21 giving the Secretary of Com-

[43] *In re* Lee Shee Wing, 164 Fed. 506.
[44] *Ex parte* Li Dick, 176 Fed. 998.
[45] *Ex parte* Li Dick, 176 Fed. 998.
[46] 174 Fed. 674.
[47] *Ex parte* Wong You, 181 Fed. 313.

merce and Labor the right to deport aliens found to be subject to deportation under the provisions of this act, or of any law of the United States, has already been adverted to. No reference was made to this provision by the Circuit Court of Appeals, which, in applying the rules of statutory interpretation on which its conclusion was based limited itself to the consideration of the general effect of the immigration act on persons of the Chinese race in connection with section 43 of the immigration act. At the time of the passage of the present act, which repealed the Act of March 3, 1903, and all acts and parts of acts inconsistent with the new act, but specifically kept in force the Chinese exclusion acts, the only law of the United States dealing with the exclusion of aliens other than such sections of prior immigration acts as were not inconsistent with the provisions of the Act of 1907, was the law providing for the exclusion of Chinese. It is true that in specific terms the provisions of the Chinese exclusion acts were kept in force; but if the intention of Congress was to keep them in force to the exclusion of the operation of the immigration act to the case of Chinese laborers, as a class deportable under the Chinese acts, the provision of section 21 that the Secretary of Commerce and Labor may deport any alien found unlawfully in the United States subject to deportation under any law of the United States is surplusage, and devoid of any significance whatsoever. Since, however, it is only as a last resort that the expressions of Congress should be viewed as being wholly without meaning, it is proper to inquire whether, in imputing to that body the intention to make both the Chinese exclusion acts and the immigration act—in so far as they provide for the deportation of aliens found to be unlawfully in the country,—apply equally to Chinese laborers, there is any good reason why Congress may not do so.

The Circuit Court of Appeals seems to have been of the

opinion that either the Secretary of Commerce and Labor under this section, or the United States Commissioner under the Chinese acts, had exclusive jurisdiction to deport Chinese laborers found unlawfully in the United States; in other words, that both could not have jurisdiction over the same class; that the Immigration act must be construed as being applicable to Chinese persons only in so far as it supplied the defects of the Chinese acts, and that where, under the latter, the terms of exclusion were absolute as to a given class, the Immigration act could not be deemed to supply a defect or remedy for which there was no need. The question of whether Congress has the power to deport Chinese laborers under both the immigration and Chinese exclusion acts was not considered; the court merely assumed that Congress did not do so in this instance; hence the court's application of the statutory rule of interpretation that the immigration act, being a general statute, silently excludes from its operation the cases provided for in the special statutes (the Chinese Exclusion acts) preceding it.

It is not perceived however, what need exists for the application of this principle of construction. Leaving aside for the moment all consideration of the effect of the general power to deport vested in the Secretary under section 21, there seems to be no principle of international or municipal law, by which Congress, as the mouthpiece of the sovereign State, is limited to prescribing any form of procedure for the purpose of exercising its inherent right to exclude or expel aliens as long as the modes designated are not such as to wantonly offend the law of nations and are not prohibited by the Constitution. If this view be correct Congress is not limited to the adoption of a single method, or bound to exact uniformity in the modes which it may adopt; and this being so, it is not perceived why the courts should feel called upon to designate which

form of procedure should be followed to the exclusion of the other.[48]

But if it is alleged that by such a construction Chinese laborers are deprived of their right under the Chinese exclusion law to a judicial determination of their right to remain, it may be pointed out, in the first place, that it is not provided in terms by the act that the administrative determination of that right is final; second that the act does not give jurisdiction to the Secretary to the general exclusion of that of United States Courts and Commissioners, but provides that he may pass on such cases as are brought administratively; and third, that assuming that the effect of section 21 was to absolutely deprive persons of the Chinese race coming within its operation of the right to a judicial determination of their right to remain, the power of Congress to do this is not open to question. And while it may well be said that the methods hitherto adopted under the provisions of the exclusion laws for the deportation of Chinese persons similarly circumstanced have seemed sufficiently drastic, the provisions of section 21 if applicable to them, have at least the merit that they do not single them out as the special objects of onerous legislation, but deal with them on an equal basis together with all aliens of other nations unlawfully in the United States.

Whether or not this section applies to aliens who have already acquired a residence in the United States, and return to resume it, depends in part on whether or not the word "entry" is meant to include the act of entering the United States as an incident of such return. As this involves the broad question as to whether or not the immigration act is applicable to aliens who have already established a domicile in the United States, which is discussed

[48]This case was reversed by the Supreme Court of the United States in the case of United States v. Wong You, 223 U. S. 67, 56 Law Ed. ——.

elsewhere[49] it would seem to require no further comment at this point.

Under this section, as well as under the provisions of the exclusion acts relative to the extent of proof of lawful presence of the alien in this country, the test is simply whether or not the proof satisfies the Secretary of Commerce and Labor that the alien's presence is lawful.[49a] The extent to which the decision of the Secretary (or that of a board of special inquiry in cases of entry) is binding on the courts is made the subject of another chapter hereof.[50]

Sec. 22. That the Commissioner-General of Immigration, in addition to such other duties as may by law be assigned to him, shall, under the direction of the Secretary of Commerce and Labor, have charge of the administration of all laws relating to the immigration of aliens into the United States, and shall have the control, direction, and supervision of all officers, clerks, and employees appointed thereunder. He shall establish such rules and regulations, prescribe such forms of bond, reports, entries, and other papers, and shall issue from time to time such instructions, not inconsistent with law, as he shall deem best calculated for carrying out the provisions of this act and for protecting the United States and aliens migrating thereto from fraud and loss, and shall have authority to enter into contract for the support and relief of such aliens as may fall into distress or need public aid; all under the direction or with the approval of the Secretary of Commerce and Labor. And it shall be the duty of the Commissioner-General of Immigration to detail officers of the immigration service from time to time as may be necessary, in his judgment, to secure information as to the number of aliens detained in the penal, reformatory, and charitable institutions (public and private) of the several States and Territories, the District of

[49]Chapter on Status, *post*, p. 427.

[49a]But in proceedings under the immigration act the Government must make out a *prima facie* case of unlawful presence.

[50]Chapter on the Judicial Review of Administrative Decisions, *post*, p. 477.

Columbia, and other territory of the United States and to inform the officers of such institutions of the provisions of law in relation to the deportation of aliens who have become public charges: *Provided,* That the Commissioner-General of Immigration may, with the approval of the Secretary of Commerce and Labor, whenever in his judgment such action may be necessary to accomplish the purposes of this act, detail immigration officers, and also surgeons, in accordance with the provisions of section seventeen, for service in foreign countries.

Departmental Rules and Regulations.

The only limitation imposed on the discretion vested in the Commissioner-General of Immigration (under the direction of the Secretary of Commerce and Labor) to prescribe departmental rules supplementary to the provisions of the act seems to be that such rules shall not be inconsistent with the act itself, and shall be calculated for carrying out its provisions and for protecting the United States and aliens immigrating thereto from loss or fraud. The validity of departmental rules issued under the authority of the Secretary of Commerce and Labor, both in connection with the Chinese exclusion laws and the immigration acts (or of the Secretary of the Treasury before him) has been passed upon not infrequently by the courts. They have the force and effect of law when not inconsistent with the provisions of the acts themselves, or of the constitution of the United States, or the treaties of this country with foreign powers, and are binding on the courts.[52] It follows that where the only immediate authority for departmental acts is to be found in the rules themselves, the validity depends on whether or not they fulfil the requirements of the departmental regulations. Thus where the rules of the Department of Commerce and Labor designate the conditions under which warrants of deportation shall issue, they can, in order to be valid,

[52] *Ex parte* Chow Chok, 161 Fed. 627; Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.

issue only as prescribed by the conditions set out.[53]

Sometimes the rules are not only authorized by the provisions of the municipal law, but by treaty as well. Thus the departmental regulations of September 28, 1889, the purpose of which was to enable Chinese persons to exercise the privilege of transit across the United States, being in force at the time of the ratification of the treaty of December 8, 1894, between the United States and China, were not only authorized by section 8 of the Act of September 13, 1888, but by the treaty itself, which provided for the privilege of transit, and recognized the validity of those regulations, and agreed to the modification thereof which took the form of the regulations of December 8, 1900.[54]

The power to prescribe rules for the enforcement of the immigration or Chinese exclusion acts includes the power to prescribe rules of evidence relating to presumptions and to the burden of proof in determining an alien's right to admission.[55] But the application of the rules can extend only to persons subject to the operation of the act; thus in construing the application of old rules 1 and 2 of the Department of Commerce and Labor, they were held to apply only to aliens entering the United States for the first time, and not to returning aliens.[56] Although the payment of a head tax was not required of aliens in transit by the Act of 1903, Rule 15 of the Immigration regulations of August 1903 (rule 1 of the present regulations), issued for the purpose of enforcing that act and requiring a deposit of the amount of the head tax by the masters or owners of the vessels bringing aliens to United States ports, was held valid,[57] as was rule 24 of the regulations of July 1907 (New Rule 12), which designates certain

[53] *Ex parte* Avakian, 188 Fed. 688.

[54] Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917; *In re* Lee Gon Yung, 111 Fed. 998.

[55] *In re* May Quong Shing, 125 Fed. 641.

[56] *Ex parte* Ng Quong Miung, 135 Fed. 378.

[57] Stratton v. Oceanic Co., 140 Fed. 829.

ports on the Canadian border as ports of entry for aliens, and provides that any alien entering across the border at any other point shall be deemed to have entered unlawfully, and shall be arrested and deported.[58]

On the other hand, rule 21 of the Immigration Regulations of July 1907 (present rule 11), providing that, if Japanese or Korean laborers present themselves for admission without passports, it shall be presumed (1) that they did not possess on departure from Japan or Korea any passport entitling them to come to this country, and (2) that they did possess at that time a passport limited to Mexico, Canada or Hawaii, has been held invalid, as beyond the power of the Commissioner-General to prescribe.[59] The Court, was, however, apparently unaware that the rule which included this provision was prescribed by the Secretary in the exercise of the authority conferred upon him by this section and the additional powers conferred upon him by the President's proclamation of March 14, 1907. This proclamation was issued in accordance with the proviso of section 1 of this act—already adverted to,[60]—authorizing the president to prohibit the entrance of alien laborers into this country whenever it should appear that passports issued to them by their respective sovereigns were being used to the detriment of labor conditions in this country. Availing himself of the powers thus conferred, the Secretary of Commerce and Labor reached an understanding with the appropriate Japanese authorities whereby it was agreed, among other things, that the specific regulations which met with the Court's disapproval in the decision above cited should go into effect.[61]

Again, rule 23 of the Chinese Regulations of 1903, re-

[58] *Ex parte* Hamaguchi, 161 Fed. 185.

[59] United States v. Hemet, 156 Fed. 285.

[60] *Ante*, p. 201.

[61] See Annual Report of Commissioner General of Immigration for 1910.

quiring that section 6 certificates presented at ports of entry by Chinese persons should be retained in the possession of the Government officials, was held invalid on the ground that the certificates, being the sole evidence on which the right to enter or remain could be established should not be taken from the persons interested in the establishment of that right.[62] While the general principle on which the decision turned seems unquestionably sound it is not thought, nor does the Department take the position, that absence of such a certificate from the possession of a Chinese person of the exempt class resident in this country renders him *ipso facto* liable to deportation. It may be added that while the Act of 1882 as amended makes the certificate the only evidence whereby the right to enter may be proven, no provision exists in any of the acts regarding the exclusion of Chinese to the effect that it shall constitute the only evidence of the right to remain. Another example of where a departmental rule was held invalid is to be found in a decision rendered in a comparatively early case,[63] where the Court held Treasury Department Circular of October 19, 1897, authorizing the exclusion and deportation of one parent of a diseased minor alien invalid and unwarranted by the statutes then in force.

Provisions for the relief or support of aliens.

So much of this section as confers authority upon the Commissioner-General to enter into contracts for the support and relief of aliens who fall into distress or need public aid is supplemented by rule 24 of the Departmental regulations, which provides that any alien who is a lawful resident of the United States and who has become a public charge from physical disability arising subsequent to landing may, with his consent and the approval of the Bureau, be deported within one year from date of landing,

[62] Toy Tong v. United States, 146 Fed. 343.
[63] *In re* Kornmehl, 87 Fed. 314.

at Government expense, provided he is delivered to the Immigration officers at a designated port free of charge. If the alien's deportation is directed, the charges incurred for his care and treatment in any public or charitable institution, from the date of notification to an immigration officer until the expiration of one year after landing, may be paid by the Bureau at such rates as it shall accept as reasonable.

Sec. 23. That the duties of the Commissioners of Immigration shall be of an administrative character, to be prescribed in detail by regulations to be prepared under the direction or with the approval of the Secretary of Commerce and Labor.

The deportation regulations contain no provisions issued with direct reference to this section; but commissioners of immigration and other officials in charge of immigration stations, or districts perform their duties in accordance with instructions, oral or written, issued from time to time by the Commissioner-General or the Secretary of Commerce and Labor.

Sec. 24. That immigrant inspectors and other immigration officers, clerks, and employees shall hereafter be appointed and their compensation fixed and raised or decreased from time to time by the Secretary of Commerce and Labor, upon the recommendation of the Commissioner-General of Immigration and in accordance with the provisions of the civil-service Act of January sixteenth, eighteen hundred and eighty-three: *Provided,* That said Secretary, in the enforcement of that portion of this act which excludes contract laborers, may employ, without reference to the provisions of the said civil-service act, or to the various acts relative to the compilation of the official register, such persons as he may deem advisable and from time to time fix, raise, or decrease their compensation. He may draw from the "immigrant fund" annually fifty thousand dollars, or as much thereof as may be necessary, to be expended for the salaries and expenses

of persons so employed and for expenses incident to such employment; and the accounting officers of the Treasury shall pass to the credit of the proper disbursing officer expenditures from said sum without itemized account whenever the Secretary of Commerce and Labor certifies that an itemized account would not be for the best interests of the Government: *Provided further,* That nothing herein contained shall be construed to alter the mode of appointing commissioners of immigration at the several ports of the United States as provided by the sundry civil appropriation act approved August eighteenth, eighteen hundred and ninety-four, or the official status of such commissioners heretofore appointed. Immigration officers shall have power to administer oaths and to take and consider evidence touching the right of any alien to enter the United States, and, where such action may be necessary, to make a written record of such evidence; and any person to whom such an oath has been administered under the provisions of this act who shall knowingly or wilfully give false evidence or swear to any false statement in any way affecting or in relation to the right of any alien to admission to the United States shall be deemed guilty of perjury and be punished as provided by section fifty-three hundred and ninety-two, United States Revised Statutes. The decision of any such officer, if favorable to the admission of any alien, shall be subject to challenge by any other immigration officer, and such challenge shall operate to take the alien whose right to land is so challenged before a board of special inquiry for its investigation. Every alien who may not appear to the examining immigrant inspector at the port of arrival to be clearly and beyond a doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry.

In the ordinary run of cases a favorable decision of the immigration officer at the port granting the alien leave to enter the United States is the last step to be taken by the alien in connection with the establishment of his admissibility. But even the facts on which a favorable decision is based can reach the board of special inquiry at the port, established by section 25, in case its correctness or legality is challenged by any other immigration inspector.

Even though the decision is not challenged, and, by authority thereof, the alien is duly admitted, the proceedings under which he was admitted, not being judicial but administrative in nature, the decision, is not *res judicata.* The fact that the Secretary of Commerce and Labor is given the power by law to return aliens found by him to be unlawfully within the United States within three years after entry, shows that this must necessarily be so; and such has been the result of judicial opinion expressed in passing on the point of the legal effect of such decisions of executive officers.[64]

A decision favorable to admission cannot, under this section, be rendered by the Immigrant inspector unless the alien seeking admission appears to him to be clearly and beyond a doubt entitled to land. If the alien does not so appear to the inspector he is to be detained for further examination in relation thereto by the board of special inquiry already mentioned.

Powers of Inspection Officers relative to admission of aliens.

The powers of immigration officers making what is commonly known the "primary" or "line" inspection relative to the admission or the rejection of aliens under the act may be summed up as follows: Inspectors have the power to pass such aliens but they are without power to render a decision refusing admission. As a matter of course such cases are referred to the board of special inquiry. And it has been held that an inspector who has in any given case refused to pass an alien on primary inspection is not qualified to pass on the merits thereof if sitting on the board of special inquiry to which the case is referred.[65] This, however, is the only decision on the

[64]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029; Lew Quen Wo v. United States, 184 Fed. 685; *Ex parte* Stancampiano, 161 Fed. 164; Mar Bing Guey v. United States, 97 Fed. 576.

[65]United States v. Redfern, 180 Fed. 500.

point, and its soundness is possibly open to question, as it proceeds on the theory that the board's hearing is in the nature of an appeal from the "decision" of the inspector who conducted the primary inspection, and that therefore it is to be assumed that a board so constituted would contain one member who might not pass upon the question of the alien's admissibility with an open mind; whereas, the procedure does not in any degree partake of the nature of an appeal, the primary inspector having no power to render a decision. His authority is limited by law to detain the alien for special enquiry, if he is not fully satisfied that the former is beyond a doubt entitled to land.

False statements made to inspecting officers.

While there seems to be a dearth of reported decisions bearing directly upon so much of this section as relates to perjury committed in connection with the application of an alien to enter, it is understood that, in several instances at least, witnesses have been convicted for false swearing under these circumstances. In order to justify such conviction, however, there seems to be little doubt that the false statements which constitute the basis of the charge must be made with reference to statements material to the right of the alien to enter.[66] Whether or not the commission of this offense affects the admissibility of the alien, depends necessarily on whether the result thereof is to place him within one of the excluded classes; and this in turn depends on whether or not the commission of an act of perjury is included among those which operate to exclude. Not being specifically enumerated among those classified as causes of exclusion the question arises

[66]A statement made by the applicant regarding his final destination does not concern the alien's right to land any more than the fact of his occupation and last residence, and where, in the examination of aliens applying for admission to the United States (Hawaii) a failure on his part to give information not called for or suggested by the line of inquiry, is not a ground for a charge of perjury. United States v. Yamamoto, 3 U. S. D. Ct. Hawaii 224; and see United States v. Martin, 193 Fed. 795.

as to whether it is included in a general class of offenses the conviction or admission of which by the alien bars him from admission. It would seem that the only classification contained in the act in which the offense of perjury could properly take its place is "felony or other crime or misdemeanor involving moral turpitude." Conceding that such is the case, and bearing in mind that the conviction of such an offense or the fact of its commission if admitted, must, in order to justify exclusion under the law, have taken place prior to the alien's entry into the country, can (*1*) a conviction of an alien for false swearing to an inspecting officer concerning his right to land, and prior to the determination of that right render him subject to deportation, or (*2*) can he be legally deported on the ground of having admitted the commission of an offense involving moral turpitude where it is found that he has admitted, prior to being allowed to enter the United States, that he has made false statements under oath to a departmental officer concerning his right to land?

It seems plain, in view of the consensus of judicial opinion on the point,[67] that in the case of (*1*) his conviction, taking place in the United States for an offense committed against the laws of the United States, does not place him in the excluded classes enumerated in section 2; in the case of (*2*) the same result would seem to follow unless it is to be assumed that the offense on the admission of which it is sought to deport the alien was committed prior to his application for admission. It is perfectly true that for certain purposes an alien is not to be deemed to have entered the United States until he has been regularly admitted in accordance with law. But when Congress goes so far as to define as a crime against the laws of the United States an act committed before admission, the alien committing it must, for the purposes at least of that offense and its legal consequences under

[67] *Ex parte* Saraceno, 182 Fed. 955.

either the immigration act or the criminal laws of the United States, be deemed to be within the United States. For to concede that an act is punishable by a State is to concede that it is committed in violation of the laws of that state; and the violation of such laws must necessarily be predicated on the commission of the proscribed act within the territorial limits of the law-making power.

Sec. 25. That such boards of special inquiry shall be appointed by the commissioner of immigration at the various ports of arrival as may be necessary for the prompt determination of all cases of immigrants detained at such ports under the provisions of law. Each board shall consist of three members, who shall be selected from such of the immigrant officials in the service as the Commissioner General of Immigration, with the approval of the Secretary of Commerce and Labor, shall from time to time designate as qualified to serve on such boards: *Provided,* That at ports where there are fewer than three immigrant inspectors, the Secretary of Commerce and Labor, upon the recommendation of the Commissioner General of Immigration, may designate other United States officials for service on such boards of special inquiry. Such boards shall have authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported. All hearings before boards shall be separate and apart from the public, but the said boards shall keep a complete permanent record of their proceedings and of all such testimony as may be produced before them; and the decision of any two members of a board shall prevail, but either the alien or any dissenting member of the said board may appeal through the commissioner of immigration at the port of arrival and the Commissioner General of Immigration to the Secretary of Commerce and Labor, and the taking of such appeal shall operate to stay any action in regard to the final disposal of any alien whose case is so appealed until the receipt by the commissioner of immigration at the port of arrival of such decision which shall be rendered solely upon the evidence adduced before the board of special inquiry: *Provided,* That in every case where an alien is excluded from admission into the United States, under any law or treaty now existing

or hereafter made, the decision of the appropriate immigration officers, if adverse to the admission of such alien, shall be final, unless reversed on appeal to the Secretary of Commerce and Labor; but nothing in this section shall be construed to admit of any appeal in the case of an alien rejected as provided for in section ten of this act.

Rule 15 contains the following special instruction for boards of special inquiry:

1. Every person appointed to serve on a board of special inquiry shall first subscribe to an oath of office.

2. Boards of special inquiry shall determine all cases as promptly as in the estimation of the immigration officer in charge the circumstances permit, due regard being had to the necessity of giving the alien a fair hearing.

3. An excluded alien shall be informed that the return voyage is at the expense of the steamship company which brought him and the fact that he has been so informed entered in the minutes.

Authority of Board to Determine an Alien's Right to Land.

Only when the facts on which the claim of the alien to land is based are referred by the inspector who has refused to admit him to the board of special inquiry does the question properly arise as to whether he is to be admitted or rejected. Whether the decision of the board refusing landing is final and conclusive depends on the nature of the causes of rejection, which are hereinbefore discussed in connection with section 10.[68] No cases other than those covered by section 10 can be determined finally by the board in its excluding decision, unless the applicant should fail to avail himself of his right to appeal to the Secretary, in which event the board's decision becomes necessarily final.

[68] *Ante*, p. 237.

Nature of Hearings Before the Board.

Employment of Counsel.

While Rule 22 of the immigration rules relating to the deportation of aliens arrested under the warrant of the Secretary of Commerce and Labor provides[69] that at a certain stage of the proceedings, and on the alien's request counsel may be admitted to the hearing, there is no such provision regarding hearings before a board of special inquiry where the right of the alien to enter is the only issue. In the absence of such a provision from both the act and the rules issued for the enforcement thereof, it is plain that the right to be represented at such hearing cannot be successfully claimed, for there is nothing in the nature of deportation proceedings which can give just grounds for such a contention.[70] As the acts themselves do not authorize the admission of counsel, if allowed under certain conditions by executive officers entrusted with the enforcement of the acts, such allowance constitutes merely a privilege, not a right. The above remarks apply only to the counsel at the hearings, not to their employment by aliens seeking admission or by their friends on their behalf, in connection with their application to enter or their appeal from an excluding decision.

Rule 31 contains the following special provisions with regard to the employment of counsel:

1. *Admission to practice.*—Every person desiring to appear on behalf of an alien may be required to submit proof to show that he is a person of good character and reputation, and if such proof fails to satisfy the immigration officer in charge, he shall forward it to the bureau for determination as to whether or not such person shall be permitted to practice before the immigration authorities. Any unseemly or unprofessional conduct on the part of an attorney shall be similarly reported to the bureau.

[69]Subdivision 4.

[70]United States v. Sing Tuck, 184 U. S. 161, 48 Law Ed. 917.

2. *Change of representative.*—Pending an appeal or warrant proceedings no alien shall change his representative except upon such reasonable terms as the immigration officer in charge shall prescribe, nor shall such change be permitted to delay the conduct or disposition of a matter pending.

3. *Fees of attorneys.*—Attorneys and persons appearing in behalf of aliens applying for admission shall not charge a sum exceeding ten dollars in each case unless the immigration officer in charge shall in writing allow an additional compensation. A family or party of aliens traveling together shall be regarded as constituting a single case within the meaning hereof. If an attorney deems himself entitled to a larger fee or if it is necessary for him to incur expenses, he shall report the fact to the immigration officer in charge when applying for the privilege of charging an additional fee or claiming reimbursement for expenses. If permission be granted, he shall collect such additional fee and expenses only through the immigration officer in charge.

Disbarment of Attorneys.

Anyone charging an alien a fee prior to his detention, or charging or receiving from an alien or his relatives or friends a fee, gift, or compensation for his services in excess of the above rate except in the manner provided, or who shall deprive an alien of any part of his chattels or effects in lieu of or as security for said fee, will, if unable after a fair opportunity to answer the complaint be disbarred by the Department (to which a full report of the matter shall be made) from practising at any immigration station of the United States.

Finality of Board's Decision.

In the corresponding section of March 3, 1903, it was provided that the decision of the board should "prevail and be final" in the absence of appeal taken to the Secre-

tary of Commerce and Labor by the rejected alien. This wording gave rise to the contention that in the absence of such appeal the favorable decision of the board was final and binding on the Secretary, and thereby deprived him of jurisdiction to deport the alien thus admitted within the three year period. The correctness of this view was denied first in the case of Pearson against Williams,[71] and again on appeal from the decision to the Supreme Court of the United States.[72] While the lower court held that the decision of the board was final as to the right of the alien to land it took the view that such decision did not constitute a final determination of his status when in the United States; but in sustaining the result thus reached the Supreme Court asserted that the board is an instrument of the executive power, and not a court; and that its decisions are merely those of one branch of the executive department, and cannot constitute *res judicata* in a technical sense; and that while final in so far as the act provided they should be—that is, with respect to the courts—they could not be considered final as against the Secretary of Commerce and Labor. But in order to enable it to give any decision at all the board must be constituted as provided by this section and where the case of an alien has been adversely passed on by an immigration officer, the affirmation of the decision by a board of which he was a member was illegal, although there was no other United States officer at the port who could have been called upon to act; and the decision of the Secretary affirming such decision was held to be tainted with the same disability and not to be binding on the courts.[73]

The subject of the finality of the Secretary's decision

[71]136 Fed. 734.

[72]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.

[73]United States v. Redfern, 180 Fed. 500.

as well as that of executive officers generally is elsewhere discussed.[74]

Appeals.

Where the right of appeal lies from the Board's decision, the following rules of procedure, forming a part of Rule 17, have been adopted by the Department:

1. *Informing alien as to right of appeal.*—Where an appeal lies the alien shall be clearly informed of his right thereto and the fact that he has been so informed entered in the minutes.

2. *Appeals, how filed.*—An alien desiring to appeal may do so individually or through any society admitted to an immigrant station, also any relative or friend, or through any person, including attorneys permitted to practice before the immigration authorities. Where a valid appeal has been taken, any further appeal shall be disregarded. Appeals purporting to be filed on behalf of an alien, but without his knowledge or consent previously obtained, may be ignored.

3. *Time for filing appeals.*—Appeals must be filed promptly. The immigration officer in charge may refuse to accept an appeal filed after the alien has been removed from an immigration station for deportation, provided the alien had a reasonable opportunity to appeal before such removal. Any appeal filed more than forty-eight hours after the time of exclusion may be rejected by the immigration officer in charge in his discretion.

. . . . . .

7. *Forwarding appeal records.*—The complete appeal record shall be forwarded promptly to the bureau with the views in writing of the immigration officer in charge.

Cases in which the alien has no right of appeal have been considered in connection with section 10.[75]

[74]Chapter on Judicial Review of Administrative Decisions, *post*, p. 477.
[75]*Ante*, p. 237.

Sec. 26. That any alien liable to be excluded because likely to become a public charge or because of physical disability other than tuberculosis or a loathsome or dangerous contagious disease may, if otherwise admissible, nevertheless be admitted in the discretion of the Secretary of Commerce and Labor upon the giving of a suitable and proper bond on undertaking, approved by said Secretary in such amount and containing such conditions as he may prescribe, to the people of the United States, holding the United States or any state, territory, county, municipality, or district thereof harmless against such alien becoming a public charge. The admission of such alien shall be a consideration for the giving of such bond or undertaking. Suit may be brought thereon in the name and by the proper law officer either of the United States Government or of any state, territory, district, county, or municipality in which such alien becomes a public charge.

Admission on bond.[76]

As the admission on bond of aliens coming within the class described in this section is left to the discretion of the Secretary of Commerce and Labor, if he refuses to exercise such discretion favorably his decision cannot be judicially questioned, even though his refusal may not seem to be based on reasons which appear persuasive to a court.[77]

Subdivisions 5 and 6 of Rule 17 contain the following provisions:

5. No appeal lies where a decision of a board of special inquiry, based *solely* upon the certificate of the examining medical officer, rejects an alien because he is suffering from some *physical* defect other than tuberculosis or a loathsome or dangerous contagious disease. But in such a case, notwithstanding exclusion, the alien may, if otherwise admissible, apply for admission on bond (sec. 26). In a case of this character he shall, after exclusion, be notified of his right to apply for admission on bond and

[76]See Chapter on Deportation Procedure, *post*, p. 614.

[77]United States *ex rel.* Chanin v. Williams, 177 Fed. 689.

may file his application within the time mentioned in subdivision 3 hereof.

6. Where the landing of an alien under bond is authorized the bond shall, unless different instructions are given, be in the sum of $500, and the alien shall not be released until it has been furnished and the immigration official in charge has satisfied himself of the responsibility of the sureties. If within a reasonable time after landing under bond is authorized a satisfactory bond is not furnished, instructions shall be requested of the bureau.

Sec. 27. That no suit or proceedings for a violation of the provisions of this act shall be settled, compromised or discontinued without the consent of the court in which it is pending, entered of record, with the reasons therefor.

The purpose of this section is obvious. Evidently Congress considered the imposition of the penalties provided by the immigration law to be collected either civilly or criminally, as a very important branch of the enforcement of the law; hence this precaution to have no compromising and minimizing of those penalties in any instances, or for any reasons, which would not stand the scrutiny of the courts.

Sec. 28. That nothing contained in this act shall be construed to affect any prosecution, suit, action or proceedings brought, or any act, thing or matter, civil or criminal, done or existing at the time of the taking effect of this act; but as to all such prosecutions, suits, actions, proceedings, acts, things or matters the laws or parts of laws repealed or amended by this act are hereby continued in force and effect.

The corresponding section of the Act of 1903 was construed not to be limited in its application to prosecutions or proceedings begun before the passage of the act, but to apply to those thereafter begun under the Act of 1875

based on acts committed before its repeal or amendment.[78] This holding has since been followed in construing this section, continuing in force the Act of 1903 as to the exclusion of alien prostitutes, and as saving the Government's right to deport a member of that class who landed in 1906, though no proceeding was brought for that purpose until 1908;[79] and likewise as applicable to prostitutes residing in the United States at and prior to the time of its passage;[80] and to enure to the benefit of contract laborers entering prior thereto, while the Act of 1903 was in force, which did not prohibit the members of that class from entering this country.[81]

Sec. 29. That the circuit and district courts of the United States are hereby vested with full and concurrent jurisdiction of all causes, civil and criminal, arising under any of the provisions of this act.

This provision appears in the Act of March 3, 1903, and in the case of *Ex parte* Crawford[82] was construed not to affect the final jurisdiction of the Secretary of Commerce and Labor in matters pertaining to the exclusion of aliens seeking admission to this country.

In section 13 of the Act of March 3, 1891, the clause appeared for the first time and was held by the Supreme Court in the case of Ekiu v. United States[83] to refer "to causes of judicial cognizance already provided for, whether civil actions in the nature of debt for penalties under sections 3 and 4 or indictment for misdemeanors under sections 6, 8 and 10. Its intention was to vest concurrent jurisdiction of such causes in the circuit and district courts; and it is impossible to construe it as giv-

[78]Lang v. United States, 133 Fed. 201.
[79]*Ex parte* Durand, 160 Fed. 558.
[80]Looe Shee v. North, 170 Fed. 566.
[81]Botis v. Davies, 173 Fed. 996.
[82]*Ex parte* Crawford, 165 Fed. 830.
[83]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146.

ing the courts jurisdiction to determine matters which the act has expressly committed to the final determination of executive officers."

Sec. 30. That all exclusive privileges of exchanging money, transporting passengers or baggage, or keeping eating houses, and all other like privileges in connection with any United States immigrant stations, shall be disposed of after public competition, subject to such conditions and limitations as the Commissioner General of Immigration, under the direction or with the approval of the Secretary of Commerce and Labor, may prescribe: *Provided,* That no intoxicating liquors shall be sold in any such immigrant station; that all receipts accruing from the disposal of such exclusive privileges as herein provided shall be paid into the Treasury of the United States to the credit of the "immigrant fund" provided for in section one of this act.

The "immigrant fund" mentioned here and elsewhere in the Act of 1907 (notably in sections 1 and 20), is no longer in existence, having been abolished by the appropriation Act of March 4, 1909.[84] From the earliest stages of the Federal control of immigration the idea seems to have prevailed that the entry of foreigners into the country should not be used as a means of collecting revenue. The excuse for the head tax has always been that the money so collected was to constitute primarily a fund for the benefit of the immigrants themselves. It was only incidentally that it was to protect the country against the influx of undesirable aliens. In the Head Money Cases,[85] considerable stress was laid upon the quasi-philanthropic nature of the tax. But, with the immigrant fund abolished, and the joint enforcement of the immigration and Chinese exclusion statutes conducted with an appropriation annually made which in no way approaches the amount of the income accruing from the tax imposed, the

[84]35 Stat. at L. 981.

[85]Head Money Cases, 112 U. S. 580, 28 Law Ed. 798.

immigration law has become, it must be admitted, a revenue producing measure.

Sec. 31. That for the preservation of the peace and in order that arrests may be made for crimes under the laws of the states and territories of the United States where the various immigrant stations are located, the officers in charge of such stations, as occasion may require, shall admit therein the proper state and municipal officers charged with the enforcement of such laws, and for the purpose of this section the jurisdiction of such officers and of the local courts shall extend over such stations.

In section 16 of the act the scrivener, in abundance of caution, took care to insert that the removal of aliens to the custody of immigration officers for the purpose of passing upon their right to enter this country was not to be considered a landing. In the Ju Toy[86] and Japanese Immigrant[87] cases, so often cited in this volume, the Supreme Court has held that, for the purpose of invoking certain constitutional guarantees, a foreigner seeking admission to this country shall not, until he has been duly admitted by the proper authorities, be deemed to have landed in the United States in the sense of having acquired the status of one actually resident within this jurisdiction, and as such in the position of being competent to invoke the protection of our laws to the same extent as citizens of this country, or persons who have by law free access to its dominions, or foreigners actually resident here. But the fact that the courts have so held and that the act itself provides that for certain purposes aliens subject to the jurisdiction of immigration officers for the purpose of examination are not to be deemed landed cannot of course be construed to imply their immunity from ordinary criminal process. Indeed, the fact of an alien's physical presence on shore, pending an ex-

[86]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.
[87]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

amination would be immaterial in considering the question of the right of either the Federal or state authorities to preserve peace and order within their respective jurisdictions. Aliens who have not as yet left the passenger vessel bringing them to this country are, when in our ports, as much subject to the local jurisdiction as when they have been actually removed on shore for the purpose of examination.

An immigration station is not, because of its being the seat of the official activity of purely Federal officers, a Government reservation, and crimes or offenses on its premises are necessarily subject to the local jurisdiction.

Sec. 32. That the Commissioner General of Immigration under the direction or with the approval of the Secretary of Commerce and Labor, shall prescribe the rules of the entry and inspection of aliens along the borders of Canada and Mexico, so as not to unnecessarily delay, impede, or annoy passengers in ordinary travel between the United States and said countries, and shall have power to enter into contracts with transportation lines for the said purpose.

The rules adopted in pursuance of this authority are: Rule 12, based upon an agreement with the Canadian transportation companies, Rule 13, and certain sections of Rule 1 relating to the inspection and collection of head tax on account of aliens entering the United States from or through Mexico. These rules provide as follows:

1. *Border ports of entry.*—The following are designated as Canadian border ports of entry for aliens: Eastport, Calais, Vanceboro, Fort Kent, Fort Fairfield, Van Buren, Houlton, Madawaska, and Lowelltown, Me.; Beecher Falls, N. H.; Island Pond, Newport, Richford, St. Albans, Swanton, and Alburg, Vt.; Rouses' Point, Malone, Fort Covington, Nyando, Ogdensburg, Morristown, Waddington, Clayton, Cape Vincent, Charlotte, Olcott, Lewiston, Niagara Falls, and Buffalo, N. Y.; Cleveland

and Toledo, Ohio; Detroit, St. Clair, Port Huron, and Sault Ste Marie, Mich.; Chicago, Ill.; Duluth, Ranier, International Falls, Warroad, Beaudette, and Noyes, Minn.; Hannah, Pembina, Neche, Walhalla, Portal, and St. John, N. Dak.; Sweet Grass and Gateway, Mont.; Porthill and Eastport, Idaho, and Marcus, Oroville, Sumas, and Blaine, Wash.

2. *Seaports of entry and locations of boards of special inquiry.*—(a) The following are designated as Canadian seaports of entry for aliens bound for the United States: Halifax, Nova Scotia, Quebec, and Point Levi, Quebec; St. John, New Brunswick, and Vancouver and Victoria, British Columbia.

(b) Boards of special inquiry shall be located at said seaports and also at the following places: Yarmouth, Nova Scotia; Calais, and Houlton, Me.; Montreal, Quebec; Newport, Vt.; Buffalo, Niagara Falls, and Lewiston, N. Y.; Cleveland and Toledo, Ohio; Detroit, Port Huron, and Sault Ste Marie, Mich.; Chicago, Ill.; Duluth and International Falls, Minn.; Winnipeg, Manitoba; Portal, N. Dak.; Sweet Grass, Mont.; Eastport, Idaho, and Marcus, Sumas, and Blaine, Wash.

3. *Head Tax.*—(a) The masters, owners, or agents of vessels plying to Canadian ports shall pay to the United States Commissioner of Immigration for Canada the sum of $4 on account of each alien bound for the United States, with the exception of such as are excluded and deported.

(b) All aliens of the taxable class seeking to enter the United States from Canada or Newfoundland shall be denied examination under the United States immigration laws (except to a sufficient extent to determine liability for head tax) until they present to the examining officers a certificate from a duly appointed agent of the transportation company bringing such aliens to the border, guaranteeing that responsibility for the payment of head tax on account of such aliens will be assumed by said trans-

portation company, certificate guaranteeing payment of head tax being returnable to the applicant for admission in the event of his exclusion, such certificate before its return to such applicant to have the word "Rejected" stamped or written in red ink across its face.

(c) All moneys collected under the provisions of this rule shall be transmitted by the commissioner of immigration for Canada to an assistant treasurer of the United States for deposit in appropriate manner. Reports of such receipts shall be made monthly by the said commissioner on the appropriate form. The commissioner shall give bond in the sum of $10,000, conditioned for the faithful discharge of his duties and the remittance of the collections herein described.

4. *Manifests.*—(a) The masters, owners, or agents of vessels bringing to Canadian ports aliens bound for the United States shall furnish to the United States immigration officials in charge at such ports complete manifests and alphabetical books of all arriving alien passengers, and also complete manifests of all arriving alien passengers en route to the United States, such as are now required by law of vessels bringing aliens to United States ports.

(b) Such masters, owners, or agents shall also furnish to the United States commissioner of immigration for Canada manifests of all passengers not citizens of the United States leaving the United States and proceeding by their vessels to foreign ports, as required by law for vessels departing from United States ports.

5. *Medical examination.*—Aliens coming to the United States from or through Canada shall be examined for mental and physical disabilities or afflictions in the manner prescribed in section 17.

6. *Inspection, certification, and admission.*—(a) All necessary facilities, in the way of accommodations, access to the aliens, and the keeping of aliens apart from the public until after inspection, shall be afforded to the im-

migration officials of the United States stationed at Canadian ports to enable them to make the inspection required by law. The inspection conducted at the seaports, the land border ports, or the interior board of special inquiry stations herein mentioned shall be similar to that conducted at United States ports. Such aliens as in the opinion of the examining inspector are not clearly entitled to admission shall be taken before a board of special inquiry. The decision of such a board shall be final unless reversed upon appeal, as provided by section 25.

(b) Aliens found admissible by the inspectors or boards stationed at the seaports or by the boards stationed at the interior ports named in subdivision 2 hereof shall be furnished with a certificate of identity prepared on the form provided by the Bureau, signed by the United States commissioner of immigration for Canada, and shall be admitted at any one of the ports of entry named in subdivision 1 hereof without further examination, upon presenting and surrendering said certificate and being identified as the proper holder thereof.

(c) Any alien of the taxable class, who shall apply for admission at the Canadian border within one year after arriving at a Canadian seaport, and not present the certificate prescribed in the preceding paragraph, shall be returned by the transportation company which brought him to the border to one of the seaports of entry or to one of the board of special inquiry stations named in subdivision 2 hereof for guaranty of payment of head tax, examination, and procurement of certificate. Any alien, whether taxable or not, who applies for entry from Canada may be required by an inspector having a doubt of his admissibility to appear for examination before a board located at one of said places. If any nontaxable alien is conveyed by a transportation company to a border point where no board of special inquiry is stationed, he shall be returned and conveyed for examination to the nearest point at which such a board is located.

7. *Deportation.*—(a) All aliens bound for the United States finally rejected at Canadian seaports shall be returned to the country whence they came by the steamship line bringing them.

(b) The steamship lines shall return at their own expense, from seaports of Canada or the United States as they may elect, to the transoceanic country of embarkation all aliens covered by the provisions of paragraph (c) of subdivision 6 hereof who are shown to belong to a class excluded by the immigration act, whenever in the judgment of the Secretary the deportation of such aliens in the manner described is deemed necessary to safeguard the interests of the United States.

(c) All nontaxable aliens who proceed to the Canadian border without having first been examined and granted the certificate of identity herein prescribed, and who may be excluded by a board of special inquiry at a border station, shall be returned a reasonable distance in Canada from the boundary by the transportation company which brought them thereto.

(d) The steamship lines, parties to the Canadian agreement, shall return, at their own expense at any time within three years from the date of landing in Canada from some Canadian port, or when that is not practicable from some port of the United States, such aliens as, having been brought into Canada upon their respective lines and having subsequently proceeded to the United States, are shown to belong to any one of the classes subject to exclusion or deportation under the immigration act whenever deportation of such an alien is ordered by the Secretary of Commerce and Labor.

8. *Transits.*—(a) Aliens of the taxable class applying to pass in transit through the United States from Canada shall furnish to immigration officers guaranty of payment of head tax prescribed in subdivision 3 hereof. If found admissible they shall be given a certificate providing for refund of head tax upon such certificate being properly

indorsed by the alien and the purser of the outgoing trans-Atlantic or trans-Pacific steamship, or the conductor of the train, upon which the holder leaves the United States.

(b) Refund of head tax will be made on aliens of the taxable class arriving at seaports of Canada and desiring to proceed immediately in transit through the United States to the transportation line responsible for its payment, upon proof satisfactory to the United States commissioner of immigration for Canada that such aliens have passed by direct and continuous journey through and out of the United States within the time limit specified in subdivision 2 of Rule 1 hereof.

This rule is based generally upon the immigration act, and specifically upon section 36 thereof authorizing the Secretary to designate land border ports of entry and upon an agreement between the various steamship and railroad companies in Canada and the Commissioner General, negotiated in accordance with section 32. The various provisions of the law and regulations, in so far as applicable, should be enforced at the Canadian seaports and along the Canadian border. Any alien who enters the United States across the Canadian border at any other place than those named in subdivision 1 of this rule as a port of entry is subject to deportation under sections 20, 21, 35 and 36.

The following rule has been adopted regarding inspection on the Mexican border.

1. *Ports of entry.*—Under section 36 the following are named as Mexican border ports of entry for aliens: Brownsville, Hidalgo, Laredo, Eagle Pass, Del Rio, and El Paso, Tex.; Douglas, Naco, and Nogales, Ariz.; and Andrade, Campo, Calexico, and Tia Juana, Cal.

2. *Procedure.*—Aliens applying for admission at the Mexican border ports of entry are subject to examination in the same manner and to the same extent as though arriving at seaports, report of inspection to be made on the appropriate forms. Where they cross the border by bridge

or railway company, such company shall be responsible for the head tax. Where they cross the border at a port of entry otherwise than through the instrumentality. of one of said companies, they shall as a preliminary to inspection be questioned sufficiently to determine with precision whether, in the event that full inspection should show them to be admissible, they are in financial condition to pay the $4 head tax. If found able to pay such tax, the inspection may be completed; and if found eligible, they shall pay the head tax before being permitted to enter.

Sec. 33. That for the purpose of this act the term "United States" as used in the title as well as in the various sections of this act shall be construed to mean the United States and any waters, territory or other place subject to the jurisdiction thereof, except the Isthmian Canal Zone: *Provided,* That if any alien shall leave the canal zone and attempt to enter any other place under the jurisdiction of the United States, nothing contained in this act shall be construed as permitting him to enter under any other conditions than those applicable to all aliens.

The effect of this section is that all aliens may, as far as the United States is concerned, enter the Canal Zone, free from the supervision or inspection of the immigration authorities; but it effectively bars those who come thence to the United States from claiming like immunity on the ground that they have come from one part of the United States to another, either as residents or in any other capacity, and that they are, therefore, relieved from the operation of the statute. As far as the provisions of this act are operative it would seem that the Chinese may enter the Canal Zone as freely as any other alien, unless they are to be considered as excluded under the Chinese exclusion acts.

Sec. 34. That the Commissioner General of Immigration, with the approval of the Secretary of Commerce and Labor, may appoint a commissioner of immigration to discharge at New Orleans, Louisiana, the duties now required of other commissioners of immigration at their respective posts.

Sec. 35. That the deportation of aliens arrested within the United States after entry and found to be illegally therein, provided for in this act, shall be to the trans-Atlantic or trans-Pacific ports from which said aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which said aliens embarked for such territory.

Sec. 36. That all aliens who shall enter the United States except at the seaports thereof, or at such place or places as the Secretary of Commerce and Labor may from time to time designate, shall be adjudged to have entered the country unlawfully and shall be deported as provided by sections twenty and twenty-one of this act: *Provided,* That nothing contained in this section shall affect the power conferred by section thirty-two of this act upon the Commissioner General of Immigration to prescribe rules for the entry and inspection of aliens along the borders of Canada and Mexico.

The power of the Secretary to deport aliens entering the United States at any place other than the seaports thereof or other than such place or places as he may designate has already been discussed in connection with the preceding sections of this act.[88] The purpose of this section is to make it obligatory upon aliens seeking admission from foreign contiguous territory to enter only at places or ports where inspection officers are located. A failure to do this renders the offender liable to deportation[89] as having evaded the immigration law.[90] The mere fact of crossing the border has

[88] *Ante,* pp. 261, 265 *et seq.*
[89] *Ex parte* Li Dick, 176 Fed. 998.
[90] *Ex parte* Hamaguchi, 161 Fed. 185.

been held, however, not to constitute an entry[91] and not to give the immigration authorities the right to deport *pro tanto* but merely to turn the alien back. If, however, he cannot be turned back in the sense of being actually conducted back into the jurisdiction of the contiguous state without violating the laws of that state, it seems that he can either be released and immediately rearrested for being in the United States in violation of the Chinese exclusion laws—if a Chinaman[92] or at once held for deportation under the immigration act.[93]

Entry by an alien by virtue of false representations made to the examining inspector results in the entry being illegal under this section when obtained by means of naturalization papers granted another and entering under the assumed name of that other.[94]

It is obviously quite as important that aliens entering across the land boundaries shall be inspected for moral, mental and physical deficiencies as in the case of those landing at the seaports. The dignity and integrity of the law must be upheld in that regard; to compel a thorough respect for it is the purpose of this section.

Sec. 37. That whenever an alien shall have taken up his permanent residence in this country and shall have filed his declaration of intention to become a citizen, and thereafter shall send for his wife, or minor children to join him, if said wife or any of said children shall be found to be affected with any contagious disorder, such wife or children shall be held, under such regulations as the Secretary of Commerce and Labor shall prescribe,

[91] *Ex parte* Chow Chok, 161 Fed. 629, aff. *same* v. United States, 163 Fed. 1021.

[92] United States v. Yuen Pak Sune, 183 Fed. 260.

[93] United States v. Wong You *et al.*, 223 U. S. 67, 56 Law Ed. ——.

[94] Williams v. United States, 186 Fed. 479; but see Lewis v. Frick, 189 Fed. 146, reversed in Frick v. Lewis, 195 Fed. 693. But entering under an assumed name or assumed relationship to a third party does not justify exclusion on the ground that the entry has been without inspection when the false statement has no bearing on the right of the applicant to admission. United States v. Martin, 193 Fed. 795.

until it shall be determined whether the disorder will be easily curable, or whether they can be permitted to land without danger to other persons; and they shall not be either admitted or deported until such facts have been ascertained; and if it shall be determined that the disorder is easily curable or that they can be permitted to land without danger to other persons, they shall, if otherwise admissible, thereupon be admitted.

Under the Act of 1903 it was provided that in the case of the wife or minor children of aliens who had filed their declaration of intention to become citizens and had thereafter sent for such wife or minor child to come to the United States, as a condition precedent to their temporary admission under the surveillance and care of the immigration officer, proof should be submitted to show that the illness was contracted on board the ship in which they came, and that this fact should be certified by the examining surgeon at the port of arrival. This condition does not appear in the present section.

The wife and children of such alien declarants are specially favored by this section in that it provides that they shall be held if affected with any contagious disorder. This comprehensive term must be taken to include tuberculosis or any other loathsome or dangerous disease. Under the law the parties are to be held until it can be ascertained whether the disorder is easily curable or that they can be landed without danger to other persons. By the terms of section 2 if the ground of exclusion is disease, it must be either tuberculosis or some sickness of a loathsome or dangerous contagious character; other diseases, even though contagious, do not *per se* subject aliens in general to exclusion. The holding of such wife or children is preparatory to their admission or deportation; but deportation could legally follow only in case the disease were tuberculosis or of a loathsome or dangerous contagious nature. There is nothing in the act to prevent the Secretary from holding for cure any alien

afflicted with diseases which are not of the above-mentioned classes. But this section allows even more than this, for not only does it give the diseased wife or children of the alien declarant the advantage of not being immediately deported, but also of being admitted, even if suffering from such disease or diseases, should it be determined that it or they are easily curable, or that such wife or children can be admitted to land without danger to other persons. It would seem to follow that such alien wives or children can claim as of right the privilege of this preliminary admission which other aliens may only request as a privilege to be granted or refused in the discretion of the Secretary of Commerce and Labor.[95]

Curiously enough the act contains no similar provision for the wives and minor children of aliens who have become naturalized citizens of the United States, although prior to the passage of this act the Supreme Court denied relief in *habeas corpus* to an alien minor child of a naturalized alien afflicted with trachoma who had been refused admission to the United States by a board of special inquiry.[96] There the court had occasion to refer to the corresponding section of the Act of 1903, containing much the same provisions as to alien wives and minor children in similar circumstances, and to point out that the children, alien born, of naturalized citizens of the United States, were, if not having dwelt in this country, not so favorably situated with regard to the opportunities of entering, as the children of aliens who had done no more than to declare their intention.

It may be added in this connection that if the wife of the naturalized citizen were seeking admission to the United States diseased or otherwise, she would, if she herself might be lawfully naturalized, be seeking admis-

[95]See section 19.

[96]Zartarian v. Billings, 204 U. S. 170, 51 Law Ed. 428.

sion as a citizen of this country[97] and not as an alien, and, therefore, would not come within the prohibition of the act. A child born outside of the United States, however, and not having ever dwelt in this country could not claim the right to enter based on the naturalization of the father unless the father had been naturalized prior to the birth of the child.[98]

The following rule (19) touching this point has been adopted by the department:

1. *Staying deportation of wives and children of declarants.*—If an alien found on arrival to be afflicted with tuberculosis or a loathsome or dangerous contagious disease is the wife or minor child of a person shown to have declared his intention, or the minor child born abroad prior to the naturalization of a person shown to be a naturalized citizen, such alien shall be held until it is ascertained whether the disorder will be easily curable, or whether he can be permitted to land without danger to others. The law does not direct that any other aliens so afflicted shall be held. Deportation shall occur promptly with respect to such wives and minor children if and when it is ascertained that the disorder is not easily curable or that the alien can not be landed without danger to others, and with respect to all others if and when it is ascertained that the alien is diseased, unless, in behalf of either, application for treatment is made promptly in accordance with the terms of the next subdivision.

Sec. 38. That no person who disbelieves in or who is opposed to all organized government, or who is a member of or affiliated with any organization entertaining and teaching such disbelief in or opposition to all organized government, or who advocates or teaches the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers, either of specific individuals or of offi-

[97]Fed. Stat. Annotated, 1994. But see this subject as discussed in the Chapter on Status, *post*, p. 379.

[98]Fed. Stat. Annotated Sec. 1993.

cers generally, of the Government of the United States or of any other organized government, because of his or their official character, shall be permitted to enter the United States or any territory or place subject to the jurisdiction thereof. This section shall be enforced by the Secretary of Commerce and Labor under such rules and regulations as he shall prescribe. That any person who knowingly aids or assists any such person to enter the United States or any territory or place subject to the jurisdiction thereof, or who connives or conspires with any person or persons to allow, procure, or permit any such person to enter therein, except pursuant to such rules and regulations made by the Secretary of Commerce and Labor shall be fined not more than five thousand dollars, or imprisoned for not more than five years, or both.

The question of the admissibility of alien anarchists has been discussed in connection with section 2 of this act.[99] This section, as section 38 of the Act of 1903 was held constitutional, although attacked on the ground of being in contravention of the 1st, 5th and 6th articles of the Constitution, of Par. 1 of Article III thereof, and of the first amendment, prohibiting the passage of any law respecting the establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the Government for the redress of grievances.[100] Aside from the fact that the evidence adduced showed that the applicant considered and called himself an anarchist and proposed to address the working men of the country advocating a general strike, thus giving rise to the justifiable inference that he contemplated bringing about an absence of government by the use of force, the court held that even if the word "anarchist" was to be deemed to include aliens whose anarchistic views are professed as those of political phil-

[99] *Ante*, p. 180.

[100] United States *ex rel.* Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979.

osophers innocent of evil intent, it would follow that Congress might well consider the public presentation of the views of such persons as dangerous to the public weal and those exploiting them undesirable additions to the population of the United States; and held that "in the light of previous decisions the act, even in this aspect, would not be unconstitutional, as applicable to any alien who is opposed to all organized government."

Since alien anarchists are excluded under section 2 of the Act of 1907, the act of landing or attempting to land them merely as aliens and irrespective of their membership in an unusually objectionable class is specifically prohibited and penalized by section 8 thereof. The essence of the offense under section 8 is the landing or the attempt to land any alien in such a way that he may escape examination by the authorities. The fact that among a number of aliens unlawfully landed or attempted to be landed, and who have not been duly admitted by an immigrant inspector, there may chance to be included one or more anarchists should not render the offender subject to the penalties of this section in the absence of knowledge on his part of the anarchistic tendencies of the alien whom he has thus landed or attempted to land. Guilty knowledge is made of the essence of the offense and the courts, in construing the Chinese exclusion acts, have consistently held that the fact of such guilty knowledge must be alleged in the indictment.

By the language of this section it is clear that the term "knowingly" is used with reference to the fact that the alien landed or sought to be landed is an anarchist, and of a class whose presence is prohibited on account of the exceptional menace which it constitutes or may constitute to the lives and safety of the members of the community; hence the increase in penalty both as to fine and imprisonment over that provided by section 8. The act of conniving or conspiring to allow, procure or permit such person to enter except pursuant to the rules and regulations

made by the Secretary of Commerce and Labor is penalized to the same extent as aiding or assisting such entrance in defiance of such rules and regulations. The act of conniving and conspiring to violate the immigration law renders the person found guilty thereof liable not only to the penalties imposed by this act but to those imposed for the crime of conspiracy as defined therein under section 5440 necessarily includes imprisonment and is, may be laid under either section and the penalty imposed accordingly. In a case arising under the act, the penalty is a fine or imprisonment; under section 5440 fine and imprisonment; but the fact that the penalty imposed by section 5440 of the Revised Statutes.[1] The indictment therefore, the more severe, offers no valid reason against proceeding against the offender under the Revised Statutes.[2]

It may be added that the act provides that "this section shall be enforced by the Secretary of Commerce and Labor under such rules and regulations as he may prescribe," and that any person is prohibited from aiding or assisting the entrance or conniving or conspiring to allow, procure or permit such entrance "except pursuant to such rules and regulations made by the Secretary of Commerce and Labor." In view of this wording the mere absence of such rules and regulations would not seem to constitute a defense to a charge based on the acts performance of which is prohibited in this section.

Sec. 39. That a commission is hereby created, consisting of three Senators, to be appointed by the President of the Senate, and three members of the House of Representatives, to be appointed by the Speaker of the House of Representatives, and three persons to be appointed by the President of the United States. Said commission shall make full inquiry, examination, and investigation by subcommittee or otherwise into the subject of immigration

[1]See United States v. Stevenson *et al.* 215 U. S. 200, 54 Law Ed. 157.
[2]*Ibid.*

For the purpose of said inquiry, examination, and investigation, said commission is authorized to send for persons and papers, make all necessary travel, either in the United States or any foreign country, and, through the chairman of the commission or any member thereof to administer oaths and to examine witnesses and papers respecting all matters pertaining to the subject, and to employ necessary clerical and other assistance. Said commission shall report to the Congress the conclusions reached by it and make such recommendations as in its judgment may seem proper. Such sums of money as may be necessary for the said inquiry, examination, and investigation are hereby appropriated and authorized to be paid out of the "immigrant fund" on the certificate of the chairman of said commission, including all expenses of the commissioners and a reasonable compensation, to be fixed by the President of the United States, for those members of the commission who are not members of Congress; and the President of the United States is also authorized, in the name of the Government of the United States, to call, in his discretion, an international conference, to assemble at such point as may be agreed upon, or to send special commissioners to any foreign country, for the purpose of regulating by international agreement, subject to the advice and consent of the Senate of the United States, the immigration of aliens to the United States; of providing for the mental, moral and physical examination of such aliens by American consuls or other officers of the United States Government at the ports of embarkation, or elsewhere; of securing the assistance of foreign governments in their own territories to prevent the evasion of the laws of the United States governing immigration to the United States; of entering into such international agreements as may be proper to prevent the immigration of aliens who, under the laws of the United States, are or may be excluded from entering the United States, and of regulating any matters pertaining to such immigration.

Under the provisions of this section a commission was appointed in the spring of 1907 which recently completed an exhaustive study of the "immigration problem." Its report, comprising some forty volumes of information,

gathered from all over the United States and from many foreign countries, is about to be issued. So far its labors have not resulted in any new legislation, except the amendatory Act of March 26, 1910, relating to sexually immoral aliens, to which extended reference has been made[3] in the discussion of section 3. Several bills have been introduced, however, as the result of the commission's researches, and additional and more drastic legislation seems to be assured.

The President has, as yet, not seen fit to exercise the discretion conferred on him by this section to call an "international conference," or to send commissions to foreign countries in an effort to control immigration by international treaties or arrangements. It may be seriously doubted whether the immigration problem of the United States is susceptible of settlement by any means other than such municipal legislation as Congress may from time to time adopt; for there is little community of interest between the United States and the countries whence the aliens come as far as concerns the general question of restriction of immigration to the shores of this country. Doubtless the latter feel that so far as the welfare or fair treatment of their nationals may be involved, such matters should properly be left to the care of that government the benefits of whose laws and institutions they have seen fit to invoke in preference to their own.

Sec. 40. Authority is hereby given the Commissioner General of Immigration to establish, under the direction and control of the Secretary of Commerce and Labor, a division of information in the Bureau of Immigration and Naturalization; and the Secretary of Commerce and Labor shall provide such clerical assistance as may be necessary. It shall be the duty of said division to promote a beneficial distribution of aliens admitted into the United States among the several states and territories desiring immigration. Correspondence shall be had with

[3] *Ante*, p. 203.

the proper officials of the states and territories, and said division shall gather from all available sources useful information regarding the resources, products, and physical characteristics of each state and territory, and shall publish such information in different languages and distribute the publications among all admitted aliens who may ask for such information at the immigrant stations of the United States, and to such other persons who may desire the same. When any state or territory appoints and maintains an agent or agents to represent it at any of the immigrant stations of the United States, such agents shall, under regulations prescribed by the Commissioner General, subject to the approval of the Secretary of Commerce and Labor, have access to aliens who have been admitted to the United States for the purpose of presenting either orally or in writing, the special inducements offered by such states or territories to aliens to settle therein. While on duty at any immigrant station such agents shall be subject to all the regulations prescribed by the Commissioner General of Immigration who, with the approval of the Secretary of Commerce and Labor, may, for the violation of any such regulation, deny to the agent guilty of such violation any of the privileges herein granted.

The object of this section will be noted, is "to promote a beneficial distribution of aliens admitted into the United States among the several states and territories desiring immigration." The manner in which such distribution is to be attempted, however, seems, so far as its specification is attempted, to be confined largely to furnishing oral, written, or printed information to admitted aliens, and the division established in the Bureau of Immigration and Naturalization for this purpose is called the Division of Information. In a sense this section is related to section 6,[4] for it is based on a recognition of the fact that some of the states and territories of the United States are still bidding for immigrants to settle within their limits, especially for the purpose of taking up lands

[4] *Ante*, p. 214.

there. Sections 6 and 40 constitute, therefore, a curious anomaly in the law, the general spirit of which is diametrically opposed to artificial or stimulated immigration, whereas the provisions of these particular sections tend to encourage if not to assist the states or territories to increase the influx of foreigners into their respective jurisdictions.

Sec. 41. That nothing in this act shall be construed to apply to accredited officials of foreign governments nor to their suites, families, or guests.

This provision was not contained in the Act of 1903. In an opinion of the Attorney General[5] it was maintained that, inasmuch as Congress had failed to explicitly except diplomatic officers and their suites from the operation of that Act, the latter must be deemed to be subject to the head tax described in section 1 thereof. It is only fair to Congress to suppose that at the time the Act of 1903 was passed it had no intention of interfering with the immunities and privileges of diplomatic officers accredited to the United States by subjecting them to the payment of the personal head tax. Under the present section, however, it is clear that the question cannot arise.

Sec. 42. It shall not be lawful for the master of a steamship or other vessel whereon immigrant passengers, or passengers other than cabin passengers, have been taken at any port or place in a foreign country or dominion (ports and places in foreign territory contiguous to the United States excepted) to bring such vessel and passengers to any port or place in the United States unless the compartments, spaces, and accommodations hereinafter mentioned have been provided, allotted, maintained, and used for and by such passengers during the entire voyage; that is to say, in a steamship, the compartments or spaces, unobstructed by cargo, stores, or goods, shall be of sufficient dimensions to allow for each and every passenger carried or brought therein eighteen clear superficial feet of deck allotted to his or her use, if the compart-

[5] 25 Opin. Atty. Gen., 370, 1905.

ment or space is located on the main deck or on the first deck next below the main deck of the vessel, and twenty clear superficial feet of deck allotted to his or her use for each passenger carried or brought therein if the compartment or space is located on the second deck below the main deck of the vessel: *Provided,* That if the height between the lower passenger deck and the deck immediately above it is less than seven feet, or if the apertures (exclusive of the side scuttles) through which light and air are admitted together to the lower passenger deck are less in size than in the proportion of three square feet to every one hundred superficial feet of that deck, the ship shall not carry a greater number of passengers on that deck than in the proportion of one passenger to every thirty clear superficial feet thereof. It shall not be lawful to carry or bring passengers on any deck other than the decks above mentioned. And in sailing vessels such passengers shall be carried or brought only on the deck (not being an orlop deck) that is next below the main deck of the vessel, or in a poop or deck house constructed on the main deck; and the compartment or space, unobstructed by cargo, stores, or goods, shall be of sufficient dimensions to allow one hundred and ten cubic feet for each and every passenger brought therein. And such passenger shall not be carried or brought in any between decks, nor in any compartment, space, poop, or deck house, the height of which from deck to deck is less than six feet. In computing the number of such passengers carried or brought in any vessel, children under one year of age shall not be included, and two children between one and eight years of age shall be counted as one passenger; and any person brought in any such vessel who shall have been, during the voyage, taken from any other vessel wrecked or in distress on the high seas, or have been picked up at sea from any boat, raft, or otherwise, shall not be included in such computation. The master of a vessel coming to a port or place in the United States in violation of either of the provisions of this section shall be deemed guilty of a misdemeanor; and if the number of passengers other than cabin passengers carried or brought in the vessel, or in any compartment, space, poop, or deck house thereof, is greater than the number allowed to be carried or brought therein, respectively, as hereinbefore prescribed,

the said master shall be fined fifty dollars for each and every passenger in excess of the proper number, and may also be imprisoned not exceeding six months.

This section shall take effect on January first, nineteen hundred and nine.

As this section is no more than an amendment to the navigation laws it would seem to require no comment here.

Sec. 43. That the Act of March third, nineteen hundred and three, being an act to regulate the immigration of aliens into the United States, exception section thirty-four thereof, and the Act of March twenty-second, nineteen hundred and four, being an act to extend the exemption from head tax to citizens of New Foundland entering the United States, and all acts and parts of acts inconsistent with this act are hereby repealed: *Provided,* That this act shall not be construed to repeal, alter or amend existing laws relating to the immigration or exclusion of Chinese persons or persons of Chinese descent, nor to repeal, alter, or amend section six, chapter four hundred and fifty-three, third session Fifty-eighth Congress, approved February sixth, nineteen hundred and five, or, prior to January first, nineteen hundred and nine, section one of the act approved August second, eighteen hundred and eighty-two, and entitled "An act to regulate the carriage of passengers by sea."

This section has already been discussed in connection with sections 20 and 21 of this act.[6]

Sec. 44. That this act shall take effect and be enforced from and after July first, nineteen hundred and seven: *Provided, however,* That section thirty-nine of this act and the last proviso of section one shall take effect upon the passage of this act and section forty-two on January first, nineteen hundred and nine.

Approved, February 20, 1907.

[6] *Ante,* p. 274.

CHAPTER III.

STATUS.

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I. In General.

In considering the question of the acquisition and loss of status by aliens who seek to enter or remain in the United States under the Chinese exclusion or immigration acts the need of a clear appreciation of what is meant by the use of the term "status" at once becomes apparent. As the very act of seeking admission into a foreign country, or of tendering allegiance to a new sovereign whose will is expressed by laws differing often fundamentally from those of the country whence the alien comes involves not only one but several changes of status, the rights and obligations of the alien, differing as they do with the assumption of each succeeding condition, should be carefully distinguished.

The word status is defined as the standing or condition of the person (Webster's New International Dictionary, 1911). For the sake of convenience and of avoiding confusion in the use of so comprehensive a term the following classification is adopted.

(1.) *International Status,* or the rights and obligations vested in and imposed upon foreigners by international law when they as aliens seek to enter or remain in the territory of a sovereign state other than their own.

(2.) *Personal or Individual Status,* or the condition of an alien who, for purposes of expatriation, leaves his native land and arrives at a port of the United States.

(3.) *Preliminary Status,* or the condition of an alien whose right to enter, after arrival at a port of the United States for purposes of entry, has not been passed upon by the administrative officers but is pending before such officers, or whose right to enter has been adversely passed upon by those officers but is pending before a judicial tribunal.

(4.) *Municipal Status,* or the condition of an alien who has been duly admitted in accordance with the provisions of the immigration and the exclusion laws, or who, having

entered unlawfully because being excludable under the former, has resided in this country unmolested by the immigration officials during the statutory period after the expiration of which he cannot be deported on the charge of unlawful entry. Municipal status acquired by virtue of these laws may be classified as (1) individual and (2) communicated status; the first being that acquired by an alien on a satisfactory showing that he himself possesses the attributes which entitle him to admission; the second expressing the condition of a foreigner who of himself or herself cannot claim the right to enter or remain in this country, but in whom, by virtue of the existence of such right in another, the law presumes the existence of a corresponding right. Municipal status as the term is used here may be further classified as (3) permanent or (4) conditional; permanent as to those aliens who after lawful entry or after the expiration of three years after unlawful entry do not commit acts which subject them to exclusion under the immigration laws, conditional as to those who do perform such acts. To avoid confusion, however, it is thought best to consider the municipal status acquired by aliens belonging to classes (1) and (2) as constituting a standing permanent under the immigration laws except in so far as it is subject to forfeiture by the performance of prohibited acts. The condition of the alien who has entered the United States unlawfully cannot, during the running of the three year period, be correctly classified as a conditional status, since, having entered in violation of those laws, he cannot be deemed to have acquired any status thereunder.

II.

A. INTERNATIONAL STATUS.

The term international status as used in this classification denotes the situation which, in international law as opposed to municipal law, any alien occupies who leaves

his country of origin, and applies for and obtains admission for residential purposes to the country of another sovereign state.

While the United States on more than one occasion has publicly announced and recognized as an incontrovertible principle "the inherent and inalienable right of man to change his home and allegiance" this enunciation cannot, of course, be deemed to ignore the equally important principle that the will of the sovereign state is supreme within its territorial limits, and that foreigners can enter only by the consent of the sovereign. There exists, then, in international law no such thing as the personal or natural right of the individual alien to enter as against the sovereign will to exclude.

Congress has the undoubted right to prohibit the entrance into this country of any and all aliens, or to expel those already admitted, or to prohibit or conditionally permit the re-entrance into the United States of aliens who have already acquired a domicile here. This power is an attribute of national sovereignty as necessary as that of exercising any other act tending toward national self-preservation. Needless to say the exigency calling for the exercise of this power of general exclusion has never yet arisen, and would in all likelihood prove of doubtful vindication; for, as Hall says, for a state to exclude all foreigners would be to withdraw from the brotherhood of civilized peoples.[1] On the contrary, the avowed policy of this country has been from the time it became a sovereign state to leave its ports open to social and commercial intercourse between its citizens and the nationals of its sister states.

While against the expression or without the acquiescence of the sovereign will no alien can claim a right to enter or remain within the limits of a foreign state, a different situation arises when a state, by opening its ports, or by the establishment or promulgation of a gen-

[1]Hall International Law, 4th Ed., p. 223; *ante*, p. 3.

eral policy, indicates its willingness to receive as residents the citizens or subjects of foreign nations. The state by extending such an invitation impliedly binds itself to protect all foreigners who avail themselves of the privilege of entering; and in return for this protection the alien, even though he retains his citizenship of origin, owes at least a temporary allegiance to the protecting state. The obligation to protect necessarily involves the existence of rights which are to be protected; and it is these rights which the alien may call upon the state at any time to protect which clothe him with a definite status in international law. That status is expressed in a well-known principle of the law of nations that an alien availing himself of the invitation thus offered by a foreign state, is entitled to all the rights which citizens of that state enjoy. On his part, he assumes all obligations imposed by the laws and constitution of the country, excepting rights or obligations of a nature purely political arising merely by virtue of actual citizenship. This general principle must, however, always be applied with the reservation that the alien, in accepting the new protection, is subject to all the municipal laws of the country offering it, even though the laws themselves provide restrictions on the rights of the alien who submits himself to the operation thereof. The state's only method of protection is by the enforcement of its laws, and this the alien is presumed to know. If, on the one hand, the offer of protection extended by the state is a guaranty that the alien coming in response thereto shall be protected to the extent of its laws, on the other hand, the fact that the alien seizes the opportunity thus afforded is a guaranty that he voluntarily submits to the operation of those laws, even though their effect be to impose limitations on the rights or remedies of the alien not imposed upon citizens.

It is, however, to be presumed that in availing itself of the sovereign privilege to enact restrictive legislation regarding aliens, the state will observe the utmost frank-

ness and good faith; in other words that when a state has once invited the entrance of foreigners no restrictions touching their right to enter into or reside therein should be imposed upon them other than those openly designated in existing treaties, decrees or public laws. Sir Robert Phillimore echoes a previous enunciation of an important principle of the law of nations when he states that no nation has the right to set a trap for foreigners.[2] As before stated, in seeking the protection of a foreign state the alien impliedly agrees to submit to whatever restrictions, whether touching the manner of his entry or the conditions under which he may be permitted to reside, which the municipal law imposes at the time of his admission into the country; he also impliedly submits to the exercise by the state of its inherent right to impose further restrictions on him as an alien during the course of his residence, or even to cause his removal from the country, should the exigency therefor arise. But he cannot be said to impliedly submit to burdens other than those actually expressed in the municipal law of the country at the time of his entry or subsequently adopted by the law-making power to meet conditions which may not have existed at the time of such entry. In other words, while certain privileges conferred upon aliens under the laws existing at the time of their entry cannot be said to constitute vested rights[3] in the sense that they cannot be revoked by subsequent legislation on the part of the state based on a change of conditions coming into existence after such entry, the proper view seems to be that, in order justly to work such revocation, not only is new

[2]Phillimore, International Law, Vol. 2, Chap. 2, citing Vattel, Droit des Gens.

[3]In the case of Chae Chan Ping v. United States, 130 U. S. 581, quoted in Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905, the Supreme Court said: "The rights and interests created by a treaty which have become so vested that its expiration or abrogation will not destroy or impair them, are such as are connected with and lie in property,..... not such as are personal and untransferable in their nature."

municipal legislation necessary, but the intent of the legislative power to impose further restrictions on domiciliary or other rights lawfully acquired must plainly appear.[4]

To sum up, the status which any alien seeking admission to the United States enjoys by the force of international law alone, consists in the right to enter and remain in this country and to enjoy the civil rights and privileges which citizens of this country resident therein may claim, subject, however, to all the restrictions and limitations imposed upon him as an alien by the laws of Congress regulating the entrance and residence of foreigners in this country and always subject, as long as he remains an alien, to the exercise of the inherent right of Congress to exclude or expel him absolutely from United States territory.

B. PERSONAL OR INDIVIDUAL STATUS.

By the term "personal or individual status" of an alien seeking to enter or to remain in the United States is meant his actual social standing or condition, as opposed to the position which he may occupy by reason of rights vested in him or obligations imposed upon him by international law or the municipal law of the United States. Before a foreigner has, in any of the methods provided by the acts of Congress, established his right to enter into or remain in the United States, he cannot be said, as far as this country is concerned, to have acquired a municipal status; for by the provisions of those acts the question whether he has a right to enter or remain depends on the decision of the administrative officers in those cases in which their decision is made by law final, or on the decision of the Courts whenever they are empowerd to pass upon the case. He has, nevertheless, apart from an international status, a standing of some kind as an individual. He may be a

[4]Rodgers v. United States, 152 Fed. 346; Lau Ow Bew v. United States, 144 U. S. 401, 36 L. E. 340.

laborer, a lawyer, or a merchant; yet that fact has, generally speaking, no legal existence, as far as vesting him with any right to enter or to remain is concerned, until it is duly proven. The question of individual or personal status seldom assumes importance; but cases have arisen which point out the need of making clear the distinction between what is here defined as a municipal and a purely personal status.

Under the Chinese exclusion laws there is only one class of Chinese persons who can under no circumstances acquire through their personal status a municipal status, to wit, Chinese laborers. All other Chinese may establish a municipal status under those laws, but only on proof of the existence of an actual personal status other than that of laborer. The need of distinguishing between a personal and a municipal status can, of course, only arise where the personal status, duly proven, is such as can lay the foundation for a municipal status.

It is perhaps the lack of precision with which the term "status" has been applied in questions arising under the Chinese Exclusion laws which leads to the need of appreciating the fact that aside from its creating a foundation for establishing a municipal status, personal status is an element which cannot always be overlooked. For instance, it is often affirmed that a Chinese alien who fails to prove his right to enter the United States has no status whatever. What is meant is that through failing to prove the requisite personal status—that is, membership in a class which entitles the applicant to admission under the Chinese Exclusion laws—he has failed to give proof of a right to enter under those laws. On more than one occasion the courts have gone so far as to hold that failure to prove the existence of a personal status which, if proven, would give the applicant the right to enter the United States, leaves him so entirely without a status of any kind as to make it incumbent upon the law to vest him with an artificial standing quite different from what his

personal status actually is. In other words, the Federal courts have in one or two instances taken the ground that even where it is admitted that an alien actually belongs to one of the exempted classes, the fact of his having been admitted on a deficient certificate by the examining officer absolutely deprives him of, or nullifies in law, his standing as a member of that class.

In the case of the United States v. Chu Chee[5] it was held that two Chinese minors admitted on deficient student certificates, who from the time of their entrance into the United States continued to be students, were laborers because their father, domiciled in this country, was a laborer; that their status was that of laborers at the time they were admitted and that they could not be deemed to assume an exempt status after unlawful entry by doing the acts incidental to such status. The Chinese Exclusion acts contain no provision to the effect that persons of the exempt classes who fail to produce certificates issued in accordance with the law shall be deemed to be other than what they actually are; those acts simply provide that such persons shall be refused admission into this country. The true status of the applicants under the facts found, was that of students who had been allowed to enter the United States on defective certificates; and the right to enter being by law made to depend on the presentation to the proper officials of certificates filled out as prescribed by law, they did not acquire the right to enter. But the actual status, meaning thereby the condition or situation of a person, cannot be altered by failure to present proper proof thereof, although the exercise of the right claimed by virtue of the status—the right of entrance in this case—may be denied until proper proof thereof is presented. There is no doubt that, had the applicants been refused admission at the port because of their failure to present the required evidence of their right to enter, this

[5] 93 Fed. 797.

defect could have been subsequently cured by presenting certificates in the form required by law. The court held that by reason of the defects in the certificates presented they could not be students, and that not being students, and being minors, they had no individual status whatever, apparently overlooking the fact that the real question involved in the case was not the controversion of a status claimed, but the question of whether or not the defective certificates gave the holders the right to remain; and that the decision of this question did not involve the consideration of whether the boys were or were not laborers.

This case is often referred to as constituting authority for the proposition that an exempt status cannot be acquired by one who has entered the United States unlawfully. But, as pointed out, in so far as the court took it for granted that the defendants attempted to assume an exempt status after unlawful entry clearly it must be wrong; for all they sought to do was to maintain the status of students after having been permitted to enter. The view that they must be considered as having acquired the personal status of their father, based as it is on the assumption of the absence of any status of their own, would seem equally unfounded. But assuming that being minor sons of a laborer they could not belong to the exempt student class—which in itself is absurd—and assuming furthermore that they actually took on the status of their father, the fact that the rights acquired by him as a laborer were transmitted to them could not make them laborers. They were, under this conception, the minor children of a laborer who himself had the right to remain in the United States. In order to acquire this right he had been obliged to register under the Act of May 5, 1892, but this obligation was not by law communicated to the boys, for the simple reason that they were not laborers. The Supreme Court has decided that the obligation resting on Chinese persons of the exempt class to produce the

certificates of identity required by the Act of 1882 in order to entitle them to admission to the United States, does not rest upon the wives and minor children.[6] It appears, however, that in its final result—that the boys were subject to deportation—the decision was correct, since seeking admission as members of an exempt class, they were bound to justify their right to enter in the method required by law; and although admitted by an immigration official, were unlawfully in the United States, since their certificates—on which alone their right to enter was based—were deficient in law. In this regard the case is analogous to that of the laborer who enters in absence of any right at all and then subsequently becomes a member of the exempted class. It is the unlawful entry which constitutes in such cases the real ground of deportation irrespective of the status subsequently acquired.

It seems clear that the personal status of an applicant for admission is no more nor less in fact than what he is at the time of making his application; and his actual condition is not affected by the fact that he fails to prove the existence thereof to the satisfaction of the inspecting authorities and in the mode prescribed by the statute. His right to enter does not depend on the existence of a given condition, but on whether or not he succeeds in proving the fact in the mode and in accordance with the conditions prescribed by law. Thus, while the examining inspector may be entirely satisfied in his own mind that a Chinese person seeking admission is a member of one of the classes exempt under the Chinese Exclusion act, he must deny him admission if the certificate presented by him does not meet the requirements of the act; but the position of the rejected applicant is in fact merely that of a member of such exempt class who has not presented documents sufficient in law to entitle him to admission. His actual status or condition, viewed as a question of

[6]United States v. Gue Lim, 176 U. S. 459, 44 Law Ed. 544.

fact rather than of law, is not affected by the circumstance that his papers are deficient. After rejection he may return with a new or amended certificate and be admitted upon satisfactorily passing the inspector's examination. The Chu Chee case shows that the observance of these principles becomes of practical value in cases where the examining officer, convinced that the applicant belongs to one of the exempt classes, permits him to enter on a deficient certificate. It is true that entrance in such a case is unlawfully effected; but the fact of unlawful entrance cannot operate logically to divest the alien of the actual personal status with which he is clothed. The true ground of expulsion in such a case is not that the alien is not a member of the exempt class, but because, although a member of such class, he has not entered this country in exact accordance with the terms of the law authorizing the entrance of such persons.

The subject of *personal status* as distinguished from the mental or moral or physical condition of a person, has not the same importance when considered in connection with the immigration laws that it bears to the Chinese Exclusion acts. Under the latter the primary question to be determined is whether or not the Chinese alien belongs to one of the exempt classes; under the former, whether the alien is a member of a general class the members of which are generally admitted to entry, or is afflicted with mental, moral, or physical disabilities which, by the immigration laws, exclude him from admission to this country. Under the Chinese Exclusion acts the question of admissibility is made one of vocational classification, while under the Immigration acts it is largely one of personal qualification. Under the Chinese Exclusion acts the question of personal status acquires importance from the fact that it involves the possession of certain social attributes, whereas questions of social classification play but an insignificant part in the determination of the question of

the admissibiliy of an alien under the Immigration acts. Under the Immigration acts it is immaterial whether the alien other than Chinese seeking admission to the United States is a laborer, a merchant, or a lawyer; his right to enter depends absolutely upon his mental, moral, or physical fitness. As the Immigration acts apply to aliens and yet leave the Chinese Exclusion acts in full force and effect, the right of Chinese persons to enter or to remain depends, first, on personal status dependent upon vocational classification; second, on proof of the existence of the classified status; and, third, upon the fact that they are free from disabilities the presence of which would exclude them under the Immigration act. By the Chinese acts, the burden of proving the existence of the personal status upon which subsequent municipal status must be based is cast upon the applicant; under the Immigration acts personal status, from the point of view of vocational classification, not being one of the necessary elements of admissibility, is of no importance; and, as aliens other than Chinese are generally admissible, when administering the Immigration acts the burden of proving that an alien cannot claim the general exemption rests ordinarily with the Government.

C. PRELIMINARY STATUS.

The question of the personal or individual status of aliens seeking admission to the United States has been discussed from the standpoint, irrespective of proof, of what the actual standing or condition of such an alien is, without reference to any rights to which he may lay claim because he is within the jurisdiction of the United States. The alien who leaves his country of origin with the intention of taking up his permanent abode within the United States, and in pursuance of that intention comes to a port of the United States may be said to renounce, as far as personal inclination is concerned, his allegiance to his former sovereign and to proffer his allegiance to the new

sovereign. Once within the jurisdiction of this country he has, at least for the time being, placed himself beyond the operation of the law of the state of his origin except, of course, in so far as by treaty between that country and the United States it may have been agreed to return him to his sovereign's jurisdiction, as for instance, where he is a fugitive from justice and subject to extradition. The ordinary alien immigrant arriving at a port of the United States, but not yet admitted by the Immigration authorities, has nevertheless come to this country, and is, with qualifications, within its jurisdiction and subject to the operation of its laws. His status is that of a citizen of a foreign power seeking admission to the United States and temporarily within its jurisdiction until the question of his admissibility under the laws relating to the admission of aliens is finally decided. The political question to be determined by the United States is whether or not it will accept the allegiance proffered. It is true that by the mere fact of coming within this jurisdiction the alien has placed himself within the protection of the state exercising that jurisdiction; and that no right to protection, however limited, can exist without giving rise to certain duties of obedience and allegiance. But the ephemeral allegiance brought into being by the physical presence of the alien within this jurisdiction is far removed from even that temporary allegiance to which residence or presence actually acquired within the territorial limits of a sovereign state give rise; and the fact that the alien himself may be willing and even anxious to pledge a permanent allegiance under these conditions cannot alter the nature of the relations existing between him and the United States at this preliminary stage. The question is still open as to whether or not the United States will accept from him that allegiance which is the necessary result of actual presence within the territorial limits of this country and extend to him the corresponding protection. The obligation to protect necessarily implies the existence of rights

to be protected, and the term "preliminary status" of the alien as used in this connection designates the measure of those rights which, under these conditions, he can successfully call upon the judicial or executive authorities of the United States to enforce. It is not the physical surroundings of the alien—whether he is still detained on or returned to the vessel on which he came, or has been removed to a house of detention or any other suitable place of maintenance for safe keeping—that affects the nature of his allegiance, the quality or amount of the protection due him, or the rights which he can claim thereunder. It was affirmed at an early period in the history of the Immigration acts that the removal of the alien from the vessel to temporary confinement within the territorial limits of the United States must have no effect upon his preliminary status. But it has been affirmed judicially that the mere fact of having set foot on land pending the determination of deportation proceedings does not alter the alien's situation, in so far as his right to invoke the application of constitutional guarantees is concerned. For such purposes his situation is no more nor less that it would be had he never been placed on shore.[7]

It has been said that the constitution of the United States may be invoked for the protection of each and every person within the territorial limits of the United States including every Chinese alien who has entered and is found therein;[8] but this is far from saying that each and every personal guarantee contained in that instrument applies with equal force to all individuals in the jurisdiction of the United States, irrespective of the conditions under which they are invoked. As has been stated[9] the position of aliens who have been admitted into the

[7]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; United States v. Seabury, 133 Fed. 983; *In re* Gayde, 113 Fed. 588; *In re* Way Tai, 96 Fed. 484; and see Zartarian v. Billings, 204 U. S. 170, 51 Law Ed. 428.

[8]United States v. Wong Dep Ken, 57 Fed. 206.

[9]*Ante*, p. 134.

United States and made the subject of deportation proceedings prosecuted in accordance with the laws regarding the admission and expulsion of aliens passed by Congress in the exercise of its sovereign powers is *sui generis;* the constitutional guarantees of the right to trial by jury, of the right to be confronted with one's accusers, and of the right to be excused from testifying against one's self have no application to such proceedings.[10] But no court has thus far unqualifiedly asserted that the constitutional guaranty of due process of law does not apply to aliens seeking to enter the United States; on the contrary, such due process has been provided by Congress in appointing methods of administrative procedure and of regulating the admission and exclusion of aliens.

If this principle applies to aliens subjected to deportation proceedings who have already been admitted into the country, it must then, *a fortiori,* fit conditions arising from the application of aliens for admission and prior to the fact of such admission. Being physically within the jurisdiction of the United States he has the right to invoke due process of law. He cannot base his demand on the ground that the nature of the proceedings *per se* falls short of being due process; for, being created and authorized by Congress in the exercise of powers bestowed by the constitution, those proceedings represent the only process applicable to the case. But, even so, the procedure adopted, must not in any of its phases, violate any of the fundamental principles of right and justice on which the Constitution is based. Thus, if it provided for the arbitrary deportation of aliens, or for their imprisonment after an administrative hearing as the result of the attempt to enter when not entitled to do so, the alien would

[10]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121; Yamataya v. Fisher, 189 U. S. 186, 46 Law Ed. 721; Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146.

have his right of appeal to the Courts.[11] Again, were attempt made under the Immigration laws to deport a person not a citizen of the United States, to whom those laws have no application he could, on the plea of absence of due process be released from such wrongful detention.[12] The courts have however stopped at this point, holding that except in such extreme instances as above cited aliens detected in the attempt to violate the laws of this country relating to their admission have no right to invoke the guarantees of its national constitution.[13]

D. MUNICIPAL STATUS.

The term "municipal status" in its specific application to the Immigration and Exclusion Laws is here used to denote the rights acquired by an alien under the municipal laws of the United States regulating the subject of the admission and exclusion of aliens after having been duly admitted to residence here by the administrative officers; or, it may be added, an alien who enters this country irrespective of the provisions of the Immigration or the Exclusion laws, where those laws have no application to the particular alien; and to these two classes of foreigners there must be added a third—that of aliens who, after having entered unlawfully have remained here for a longer period than that in which the law authorizes their deportation, if found to have entered unlawfully. This condition is, as between the Immigration and Chinese Exclusion Laws peculiar only as to the former, since the latter provide no period after the expiration of which Chinese

[11]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; Wong Wing v. United States, 163 U. S. 230, 41 Law Ed. 140.

[12]*In re* Buchsbaum, 141 Fed. 221, affirmed in Rodgers v. United States, 152 Fed. 346; United States v. Nakashima, 160 Fed. 842; Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

[13]United States *ex rel.* Turner v. Williams, 194 U. S. 279, 48 Law Ed. 979; *In re* Chin Wah, 182 Fed. 256; *Ex parte* Lung Wing Wun, 161 Fed. 211; Wong Sang v. United States, 144 Fed. 968; United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

persons found to have entered this country are no longer subject to expulsion.

The fixed municipal status is, of course, permanent only insofar as existing laws regulating the admission and exclusion of aliens are concerned. No foreigner, as long as he retains his political status as such, can be said to acquire a permanent municipal status in the United States, in the sense that it may not be submitted to the restrictive operation of Congressional legislation passed subsequent to his admission, or altogether terminated by such legislation; in other words, the rights of foreigners residing in the United States are always conditional on the continuance of the governmental permission to exercise them.

It is not necessary, in order to acquire a fixed municipal status, in the sense in which the term is used here, that the alien shall be one of a class not subject to exclusion under the Exclusion or Immigration acts; for since those acts designate in various provisions the conditions under which aliens who have already entered may remain, the fulfillment of those conditions, or the expiration of the term during which their fulfillment may be required, serves to terminate the jurisdictional authority of administrative officers to deport. Thus, it is provided in section 21 of the Immigration act that any alien who has entered the United States may, within three years, be arrested and deported on a warrant issued by the Secretary of Commerce and Labor, if the latter shall be of the opinion that the alien is unlawfully in the United States. The act of deporting such alien is the extent to which the Immigration laws can be operative with regard to him within the three year period. With the passing of the period the right to deport no longer exists, and the right to remain becomes absolute as far as the Immigration act is concerned. So too with regard to the right of the Secretary of Commerce and Labor to deport within three years after landing aliens who within that period have

become public charges from causes existing prior to landing; the expiration of the three year period places the alien beyond the reach of the provision.

It is to be noted however, that, although the standing of the alien with regard to the rights which he may exercise after entry is conditional on being allowed to continue to exercise them during the three year period (and to that extent his municipal status under that law might be designated for the sake of convenience as a conditional municipal status) the true ground for his expulsion is not that he is occupying a status subject to termination by the administrative authorities within the designated period, but because, being unlawfully in the United States he is to be deemed as having entered unlawfully and therefore as never having acquired any municipal status whatever.

The Acquisition of a "municipal status" and a domicile distinguished.

The term "municipal status" acquired under the immigration laws is in no way to be confused with the acquisition of domicile. An alien, who, whether entering in violation of the Immigration acts, or, after being duly passed by the immigration authorities in the manner provided by law, takes up his residence here with intent to remain has done all that is necessary for the acquisition of a domicile. The only difference is that if the entry is lawful the municipal status is fully established, subject only to termination by the commission of acts subsequent to entry which the law provides shall justify the forfeiture of the domicile lawfully acquired; whereas, if the entry is unlawful the municipal status is not complete except on the expiration of the three year period within which aliens entering in violation of law are subject to deportation on the ground of unlawful entry. Municipal status under the Act of 1907, as amended by the Act of March 26, 1910, when fully acquired by aliens, involves not only the acquisition of a domicile, but of the right to maintain it

subject only to its forfeiture by the commission of acts which the law provides shall have that effect.

The distinction between the mere presence of an alien in this country after unlawful entry subject to termination by deportation within the statutory period, and a status lawfully acquired under the Immigration law subject to forfeiture by the commission of a certain act or acts is by no means academic. The recognition of this distinction becomes of the first importance in considering questions arising in connection with the right of an alien to re-enter the country based on previous domicile here; for in so far as, under the Immigration acts, the right of an alien to re-enter is based on continuing rights of domicile previously acquired, it seems plain that the acquisition and the maintenance of the domicile must be lawful in order to sustain the alleged right to re-enter based thereon. The alien who enters the United States lawfully is, theoretically at least, absolutely immune from the operation of the three year provision; his municipal status is acquired at the moment that his entry is lawfully accomplished and the fact that he leaves this country for a temporary visit abroad prior to the expiration of the three year period can have no effect on rights, domiciliary or others, already acquired, which, through the very fact of their lawful acquisition are beyond the reach of the three year period. On the other hand the alien who enters unlawfully and departs within the three year period has, from the time of entry until that of temporary departure, never acquired any municipal status under the Immigration acts, and cannot therefore, invoke an unauthorized residence in support of the right to retain or resume it. A different question is presented by cases where the three year period has run as to aliens who have unlawfully entered and remained in the United States until the expiration thereof. This question will be considered in a later

section.[14] The only example of true conditional municipal status afforded by the Immigration law is in Section 3 as amended by the Act of March 26, 1910, which provides for the deportation to the country from whence they came, of aliens who, after having entered the United States lawfully or otherwise, are shown to have committed during their sojourn here certain prohibited acts. Here the law provides for the forfeiture by deportation of an established municipal status by those who have lawfully acquired it—which is very different from the removal from the United States of persons who have never lawfully come within its limits.

(I.) *The Acquisition and Loss of Municipal Status.*

Inasmuch as the provisions of the Chinese Exclusion and Immigration Acts constitute the municipal legislation adopted by Congress for the regulation of the admission and expulsion of aliens from the United States, the term "Municipal Status" as here used denotes the rights and obligations granted to and imposed upon foreigners by those special laws—not the general standing or condition of aliens in this country apart from the operation of these special acts; for their general municipal status does not include rights or obligations originating in or dependent on the laws regarding the admission or expulsion of aliens.

1. Under the Chinese Exclusion Acts.
(A.) Acquisition (In General).

1. Of Individual Municipal Status.

The acquisition of Municipal status under the Chinese Exclusion Acts depends on (*1*) the existence of a personal status in the applicant which, if proven, entitles him to entry at once; (*2*) proof of the personal status in the

[14] *Post*, p. 465.

manner provided by law. Mere length of residence in this country is insufficient to establish the existence of a status lawfully acquired under these acts, or to give rise to a presumption that a Chinese person entered before the Act of 1882 went into effect.[15]

By Article I of the Treaty of November 17th, 1880, between the United States and China[16] it was mutually agreed that the United States might regulate, limit or suspend the coming to or residence in this country of Chinese laborers but that such coming or residence might not be absolutely prohibited. The Acts of May 6, 1882, and July 5, 1884, passed for the purpose of exercising the right of suspension of Chinese immigration acknowledged in the treaty, prohibited for the term of ten years the coming to the United States of all Chinese laborers except such as were already in the country on the date of the conclusion of the treaty, or should have entered within ninety days thereafter. The effect of this legislation was to render the *acquisition* of a municipal status under the Exclusion acts an impossibility for Chinese persons of the laboring class. Provision was made, however, for the retention of rights already acquired by means of certificates to be delivered by the customs officers to Chinese laborers already in the United States on the occasion of their departure from this country whereby their identification on return from a temporary absence might be secured.

The acquisition of municipal status by members of the exempt classes under those acts was made conditional on the presentation at the ports of entry of a certificate of identity issued by designated authorities of the Chinese government, commonly called a "Section 6" certificate. This certificate was made by the laws in force to constitute prima facie evidence only that the rights enjoyed by

[15]United States v. Ah Chung, 130 Fed. 885.

[16]*Ante*, p. 26.

virtue of entry granted on presentation thereof were lawfully acquired; and the holder might at any time after entering be deported if the authorities found that the entry was unlawful. Unlawful entry might result from several causes, such as the wrongful acquisition of the certificate by a person not entitled thereto, or the fact that the certificate itself did not meet with the requirements prescribed by law.[17] But the fact that the acts provided that the contents of the certificate were always subject to rebuttal could not in law qualify the right to remain as conditional provided that it actually existed. A Chinese person—and this term includes all Chinese persons whether domiciled in China or elsewhere at the time of their application for admission to the United States[18]—admitted under the law either has or has not acquired a municipal status thereunder. If his entry is lawful his status exists the moment he is admitted: if unlawful, he never acquires any status under the Exclusion laws, and the protection which he enjoys as a resident may be taken away by deportation as soon as his illegal presence is discovered and proven. In such cases no question of municipal status arises.

The municipal status acquired by entry based on a "section 6" certificate issued according to law, while being complete, as far as the act under which it was issued was concerned, was and is subject to termination in any mode which such succeeding statutes might or may prescribe. The Chinese person of the exempt class, being an alien and, under our laws, incapable of naturalization, could claim no greater right through having been admitted in accordance with the Exclusion Act of 1882 than any other alien residing in the United States. He like any other alien, can never acquire by domicile or otherwise, a vested right to remain. On four distinct occasions Congress has

[17]Cheung Pang v. United States, 133 Fed. 392; United States v. Pin Kwan, 100 Fed. 609; Mar Bing Guey v. United States, 97 Fed. 576.

[18]Act of September 13, 1888; United States v. Foong King, 132 Fed. 107.

exercised its inherent right to expel Chinese, irrespective of whether they have entered lawfully under the Exclusion laws, and without regard to domiciliary rights acquired by residence, even when based on prior treaties; and on each occasion the power of Congress to enact such provisions has been upheld by the highest tribunal of the United States.

By the Act of October 1, 1888, Congress denied the right of reentering this country to Chinese laborers whether or not provided with the return certificates prescribed by the Acts in force, and which under these acts entitled the holder to return to this country. By the Act of May 6, 1892, further residence in the United States by any Chinese laborer, whether legally here or not, was made conditional on his obtaining a certificate of registration from the Collector of Internal Revenue, or proving by special rules of evidence the fact that he had resided here prior to the date on which the law went into effect, and had been prevented by "unavoidable causes" from securing said certificate. To obtain a municipal status under the new law the certificate of residence was sufficient, and it was held that in order to overcome the presumption of the existence of such status arising from its possession it was necessary for the testimony of the Government to be clear and convincing.[19] Indeed it was held in one case that where a Chinese person was ordered deported in a judgment on *habeas corpus* where the petitioner had sought judicial relief from an order of deportation, and after giving bail failed to appear and was later apprehended for the purpose of carrying out the judgment, and was found to have been granted a certificate of residence duly issued by the Collector of Internal Revenue under the Act of 1892 as amended, the certificate constituted conclusive proof of his right to remain in this country.[20] The effect of the judgment of discharge rendered by a United States

[19]Jew Sing v. United States, 97 Fed. 582.
[20]*In re* Tom Hon, 149 Fed. 842.

Commissioner has been held a bar to further proceedings against the same party on the same facts before a District court of the same district;[21] and the jurisdiction of the Commissioner to cancel a certificate of residence on the ground that it was obtained by fraud has been denied.[22] But the judgment of discharge cannot operate to establish the existence of municipal status under the Act of 1892 if not rendered on the merits of the case.[23] Again the Act of November 3, 1893, amending that of May 5, 1892, provided that any Chinese person alleging himself to be a Chinese merchant seeking to re-enter the United States was under the obligation of proving the fact of a prior commercial domicile in this country for the year immediately preceding the alleged departure by special rules of evidence specified in the act. In the absence of such proof acquisition of a municipal status under this law is impossible.

Finally, by the Act of August 18, 1894, Congress made the right to resume a commercial domicile previously acquired by Chinese person depend absolutely on the decision of the appropriate administrative officer; with the result that to-day a Chinese merchant who may have been lawfully established in this country for a generation cannot leave the United States for a temporary visit to China or elsewhere on business or pleasure, without running the risk of losing a municipal status lawfully acquired and for years as lawfully maintained, unless he succeeds in proving its existence under conditions far more onerous than those to which he would be subjected had he never acquired it.

(2.) Communicated Status.

Generally, the acquisition of *municipal status* under the exclusion laws is, as previously stated, dependent on

[21] United States v. Yeung Chu Keng, 140 Fed. 748.
[22] *In re* Lee Ho How, 101 Fed. 115.
[23] *Ex parte* Loung June, 160 Fed. 251.

proof by the applicant himself that he belongs to the exempt classes of Chinese, and on the presentation of the facts on which the right to enter is based according to the methods prescribed by law; *i. e.* by a certificate of identity duly issued. Due recognition is, however, accorded to particular cases in which, in order to entitle the applicant to the right to enter, only such evidence is required as will prove the existence of a communicated status. Such a condition arises when a Chinese person presents himself for admission, the right to enter being based on a municipal status previously acquired by an individual whose social connection with the applicant is so intimate and binding as to give rise to the presumption that the rights acquired by the former are necessarily communicated to the latter. Thus, it has been definitely determined, after decided vacillation of judicial opinion, that the wives and children of Chinese persons of the exempt classes who have been granted admission to the United States, have under the laws and treaties in force the right to enter by virtue of either marital or parental relationship, and by virtue of that alone.[24] In the case of United States v. Gue Lim,[25] the Court held that the provision of Section 6 of the Act of May 6, 1882, as amended by that of July 5, 1884, which made it incumbent on Chinese members of the exempt classes to present a certificate of identity as a prerequisite to acquisition by them of a municipal status under the act, had no application to the wife and minor children of a Chinese merchant who accompanied them or was already domiciled in this country. It was pointed out that the fact that such persons were not specifically mentioned as constituting members of the exempt classes in the treaty of 1880 could not be interpreted to mean that

[24]United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 554; *In re* Chung Toy Ho, 42 Fed. 398; United States v. Foo Duck, 172 Fed. 856; *contra In re* Ah Moy, 21 Fed. 785.

[25]176 U. S. 549, 44 Law Ed. 544.

they were to be excluded, and that their failure to present the certificate of identity could not afford just ground for their rejection or expulsion, in as much as they were not only not bound under the treaty as such wife or minor child to obtain such certificate from their own Government, but were not entitled to do so. They must enter or remain, said the Court, as the wife or minor child of the domiciled husband or father, or not at all. It necessarily follows that the fact that such persons have no certificate in their possession gives rise to no presumption that they are illegally in the United States.[26]

It is plain, then, that such Chinese persons seeking admission in this capacity under the Exclusion laws are not entitled to enter or remain of their own right. But the municipal status acquired, though of a communicated character, and not based on any inherent right to acquire it, is, none the less, a status as complete in every way as that of the person from whom it is derived. Obviously, it is erroneous to state that a Chinese wife or minor child has no status under the Exclusion laws. What is meant by this statement, so frequently made, is that when seeking to enter or remain in the United States such a wife or minor child cannot base a claim to enter on the existence in the individual of the right so to do. The personal status of such persons remains of course unchanged, but they cannot acquire a municipal status of their own right.

It does not follow, however, that the wives or minor children cannot, under existing laws or treaties acquire a municipal status of their own. It is not impossible to conceive that the wife of a Chinese member of the exempt classes might come to the United States as a traveller for curiosity or pleasure or that the minor child of such person might seek admission in a similar capacity, or as a student or merchant. But in such case the applicants would be seeking to enter, not by virtue of a right com-

[26]United States v. Chin Sing, 153 Fed. 590.

municated by another, but because of their membership in one of the classes allowed by treaty to enter, and would therefore, be under the obligation of proving their individual personal status as a preliminary step to acquiring a municipal status under the Chinese Exclusion laws. And as this status can be acquired only be presenting the certificate of identity prescribed by those laws, the rule laid down in the Gue Lim case would have no application.

The Chinese persons who were allowed to remain in this country under the Gue Lim decision were the wife and minor child of a Chinese merchant domiciled here. Said the Court: "When the fact is established to the satisfaction of the said authorities that the person claiming to enter either as wife or minor child, is in fact the wife or minor child of one of the members of a class mentioned in the treaty as entitled to enter then that person is entitled to admission without the certificate." Since the determination of the right of the latter to enter has been entrusted by the Act of 1894 exclusively to the judgment of executive officers, no right to enter can be claimed on behalf of the wife or minor child in the absence of a favorable administrative decision with respect to the status of the husband or father. As the Court expressed it: "They come by reason of their relationship to the father, and whether they accompany or follow him, a certificate is not necessary in either case." In order to entitle the wife or minor child to enter it is not necessary that the father must have already acquired a commercial domicile; all that is required is that administrative officers shall have passed favorably upon his right to enter.

If the reasoning in the Gue Lim case is applicable to the wives or minor children of a merchant it is of course equally applicable to aliens similarly situated with regard to members of all the exempt classes, or, as the Court says, all those "entitled to enter." The Act of September 13, 1888, and later the treaty of December 8, 1894, provided that any Chinese laborer who leaves the United States

may return thereto within the period of one year after the date of his departure, if such laborer so departing has a lawful wife, child, or parent, in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement, provided he shall have duly obtained and on return presented the return certificate required by law. The treaty of 1880 between the United States and China provided that Chinese laborers residing in the United States on November 17, 1880, should be allowed to go and come of their own free will and accord. Section 3 of the Act of May 6, 1882, provided that the act should not apply to Chinese laborers who were in the United States on the 17th day of November, 1880, or who should come into the country before the expiration of ninety days next after the passage of that act. It is obvious from this legislation taken in connection with the treaty which it was intended to supplement, and in connection with subsequent legislation on the subject, that, since August 5, 1882, Chinese laborers have been excluded from admission into this country; but it is equally clear that Chinese laborers who resided here on the 17th of November, 1880, or who arrived here on or prior to August 5th, 1882, were, both by the provisions of the Act of 1882 as well as those of the treaty of 1880 specially exempted from the excluding clauses contained in the act. The provision of the Act of September 13th, 1888, stating how and when Chinese laborers might leave the United States and return thereto, did not, it would seem, create a new right which members of that class had not hitherto enjoyed, for the right to come and go was already accorded them by the treaty of 1880; it simply imposed conditions with regard to the manner in which the existing right might be exercised. The same may be said concerning Article II of the treaty of China of 1894 to the same effect. It has never been held that because under the Act of November 3, 1893, Congress imposed conditions on the manner of re-entry into

the country by Chinese persons alleging themselves to be merchants domiciled in the United States such persons are for that reason, any the less members of the exempt classes. There seems to be no good reason why, therefore applying the principles of the Gue Lim case, any Chinese laborer returning from abroad within the time designated in the treaty of 1894, and presenting a return certificate lawfully obtained, could not claim as a matter of right, as a member of an exempted class, permission to bring into this country an accompanying wife or minor child. It is understood that this precise question has not been passed on either judicially or administratively—at least, not since the date of the Gue Lim decision; and since it has been uniformly held that the wife of a Chinese laborer takes his status as to class and is subject to the same class restrictions with her husband,[27] it is hard to avoid the conclusion that she takes the benefits with the burdens. The departmental view is that while a lawfully domiciled laborer cannot bring his wife or minor child into the United States, either accompanying him, or returning with him from a temporary lawful absence, or for the purpose of joining him here, it is conceded in administrative practice that the wife or minor child of such laborer living in the United States derives from the marital relation a communicated status under which such wife or child may re-enter, either alone or with the husband or father, after temporary departure, on the statutory ground that they have a husband or father here, provided they do not overstay the period of one year prescribed by the Act of September 13th, 1888.

While the Chinese laborer lawfully in the United States is in the full possession of such municipal rights as he may require as a *laborer* under the Exclusion acts, it is possible for him as an individual, to attain other and broader rights. As a laborer he may leave the United

[27]Case of the Chinese wife (Ah Moy), 21 Fed. 785.

States and return only on certain conditions; whereas, should he ameliorate his condition and become a person engaged solely in matters of commercial enterprise, or in teaching or study, those particular restrictions as to return have no further application to his case. There is nothing in the Exclusion acts that prevents a voluntary change of personal status on the part of the individual; but, while the individual is left free to act, the law determines for itself whether the acts done bring about a change in the personal status on which new rights under the Exclusion laws may be based. The change once accomplished, the new rights and obligations come at once into being, and former rights and obligations incident only to the old status are terminated.

A practical demonstration of this principle is afforded by the case of a Chinese laborer, who, having failed to register during the registration period provided by the Act of May 5, 1892, as amended, subsequently becomes a merchant, and whose deportation is attempted on the ground that he failed to register when a laborer. The act provided that any Chinese *laborer* who shall be found within the jurisdiction of the United States without such certificate shall be deemed to be unlawfully in this country; it does not refer to *merchants* thus found. Thus, it has been held that an unregistered Chinese laborer, until proceeded against under the exclusion acts, has all the rights of a resident alien, and among them that of becoming a merchant and of enjoying all the rights of a merchant.[28] But a Chinese person who, as a laborer has unlawfully entered the United States cannot, it would seem, logically claim that subsequent acquisition of the mercantile status relieves him of the operation of the act; for in such case the fact of unlawful entry would, under the provisions of the Chinese exclusion acts, necessarily deprive him of the

[28] *Ex parte* Ow Guen, 148 Fed. 926; but see *contra* United States v. Chan Sam, 17 Philippine Reports 448.

right to remain, irrespective of whether the right was claimed by him either as a merchant or a laborer.

(B.) Loss (In General).

Loss of municipal status acquired under the Chinese exclusion acts may occur in one of three ways: (1) by the death of the parties; (2) by acts of Congress, and (3) by the acts of the parties.

(a.) By Death.

Loss of municipal status by the death of the parties calls for comment only in so far as it involves the consideration of the effect thereof on aliens whose rights have been communicated by others who have acquired them in an individual capacity. Wives or minor children of Chinese who have been admitted into the United States, can, as such, claim such similar privileges only so long as the marital relationship or the condition of minority may exist.[29] This subject will be further discussed in the loss of communicated status.

(b.) By Acts of Congress.

The question of the effect of the exclusion acts on municipal rights already acquired by Chinese persons in the United States has been the subject of various de-

[29]This necessarily only on the assumption that they base the right to remain on a supposedly existing communicated status which has terminated by the death of the husband or father. But on what ground could the widow of a domiciled Chinese merchant be expelled? Not because she entered unlawfully, for her entrance was lawful; nor because she is a member of the laboring class, for she does not become by the death of her husband the member of a class to which she never belonged. The same reasoning is applicable to the minor children of deceased merchants; and, in spite of the departmental view to the contrary, it is thought that the Chinese exclusion acts constitute no authority for the expulsion of such persons on the ground that they are not members of an exempt class. An analysis of the Gue Lim decision reveals, it is thought, the enunciation of no principle in conflict with this view.

cisions by the Supreme Court of the United States. In the case of Chew Heong v. United States[30] it was held that since Article II of the Treaty of 1880 provided that "Chinese laborers who are now in the United States shall be allowed to go and come of their own free will and accord and shall be accorded all the rights, privileges, immunities and exemptions which are accorded to the citizens and subjects of the most favored nation," and since the Act of 1882 was avowedly passed in furtherance of the provisions of the treaty, section 4 of the act providing that, in order to give Chinese laborers the right to return, should they present at the port of return certificates of identity, had no application to Chinese laborers who were not in the United States at the time the treaty was concluded or who should not have returned within ninety days after the passage of the act. The court refused to give the act retroactive force in a case where it was shown to have been a physical impossibility for the alien to conform to the requirements of the act regarding the certificate, calling particular attention to the fact that the law was enacted for the express purpose of carrying out—not of obstructing—the terms of the treaty, and to the further fact that in the absence of legislation clearly and beyond doubt pointing to the abrogation of the treaty no such intention on the part of Congress could be presumed. The principle enunciated in the decision was, in a word, that a municipal status lawfully acquired by an alien residing in this country under the terms of a treaty entered into with a friendly power cannot be held to be terminated by general statutory provisions which do not point conclusively to the abrogation of treaty rights.[31]

The same principle was expressed in the case of Lau Ow

[30]112 U. S. 536, 28 Law Ed. 770.

[31]See also United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591; *In re* Leong Yick Dew, 19 Fed. 490; *In re* Chin Ah On *et al.*, 18 Fed. 506.

Bew v. United States.[32] The Act of July 5, 1884, that provided that the "section 6" certificate which Chinese persons of the exempt classes were obliged to secure from their own government prior to coming to the United States should constitute the sole evidence of their right to admission. The petitioner was a Chinese merchant domiciled in the United States who, after giving full proof of his identity and occupation as required by the regulations of the Treasury Department at that time, left the United States for a visit to China, and on his return was refused admission by the collector of the port of San Francisco on the ground that he had failed when in China to obtained the certificate above referred to. It had already been held by the Federal courts that no certificate could be required from Chinese of the exempt class seeking to enter or return to the United States when it appeared that through residence in some foreign land other than China the certificate could not have been obtained.[33] These decisions the Supreme Court cited with approval, stating that the general terms used in the acts "should be limited to those persons to whom Congress manifestly intended to apply them," and that "no restriction on the footing upon which such persons (domiciled foreigners) stand by reason of their domicile of choice or commercial domicile is to be presumed." The doctrine of the Chew Heong case was thus in word and spirit reaffirmed.[34]

Prior, however, to rendering the decision last cited the Supreme Court had occasion to examine the effect of congressional legislation purporting in terms, the intention of which could not be misunderstood, to terminate the municipal rights lawfully acquired by Chinese laborers under the exclusion laws of 1882 and 1884.

[32]144 U. S. 47, 36 Law Ed. 340.

[33]*In re* Ah Ting, 23 Fed. 329; *In re* Low Yam Chow, 13 Fed. 605.

[34]United States v. Chin Quong Look, 52 Fed. 203; United States v. Lee How, 48 Fed. 825; *In re* Shong Toon, 21 Fed. 386; *In re* Ah Quan, 21 Fed. 182; *In re* Ho King, 14 Fed. 724.

The Act of September 13th, 1888, provides for the issue of return certificates to Chinese laborers lawfully in the United States who might wish to visit China, the production of which on their return was, like the certificate provided by the Act of 1884, to constitute the sole evidence of that right. The protective Treaty with China on the ratification of which the Act of September 13th, 1888, depended was not ratified by that government, whereupon Congress passed the Act of October 1, 1888, prohibiting any Chinese laborer who had been, or was then, or who might thereafter be in the United States and who had departed or who might depart therefrom to enter the United States, whether in possession of the certificate or not.

On the broad ground that Chinese aliens or any other aliens in the United States were there merely on sufferance, and subject at all times to the exercise on the part of the United States, through Congress, of the sovereign power to deport them; and on the further ground that, granting that the Act of October 1st, abrogated Article II of the Treaty with China of 1880 which provided that Chinese laborers then in the United States should be allowed to come and go of their own free will there was nothing in the nature of treaty stipulations with foreign powers which rendered them incapable of repeal or abrogation by a subsequent act of Congress, the Supreme Court held[35] that the act was constitutional, and that a Chinese laborer who had left the United States prior to October 1, 1888, was deprived by that act of his status of Chinese laborer with a right to re-enter the United States. And the same reasoning was applied in the case of a Chinese person claiming to be a returning merchant who had left the United States before the passage of the Act of November 3, 1893, which provided as a condition of admission that the fact of prior mercantile status in the United States should be proven according to special rules

[35]Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503.

of evidence,[36] and it was held that on failure to produce such proof the applicant was liable to deportation. It has, however, been held that in so far as the Act of November 3, 1893, provided for the registration of Chinese laborers it was operative only on those who were in the United States at the time of its passage;[37] and that where the facts showed that a Chinese non-laborer who temporarily left the United States on a visit to China had been domiciled in this country prior to 1868, the date of the first treaty with China, he was outside the operation of the exclusion laws.[38]

Again the effect of the Act of August 18, 1894, is in point, insofar as it operates to exclude Chinese persons claiming the right to enter or return to the United States. By that act the decision of administrative officers as to the right of aliens to enter the United States was made final and not subject to judicial review; and under it the right of persons alleging themselves to be returning merchants,[39] or even wives and children of domiciled Chinese merchants[40] have been refused admission, and the action of the executive officers upheld when before the Supreme Court on appeal. Strictly speaking these decisions are not authorities on the loss of status by legislative enactment, because the executive officers found that the status claimed did not exist, and their finding of fact was made conclusive on that point. But, assuming that the facts were as claimed by the applicants and that the administrative decision was wrong they show how status may be lost by congressional legislation without any fault on the part of the alien who is deprived thereof. The en-

[36]United States v. Loo Way, 68 Fed. 475; Lew Jim v. United States, 66 Fed. 953; Lai Moy v. United States, 66 Fed. 955; *In re* Lung, *In re* Yue Soon, 61 Fed. 641.

[37]*In re* Yue Bing Hi, 128 Fed. 319.

[38]*Ex parte* Ng Quong Ming, 135 Fed. 378.

[39]Lem Moon Sing v. United States, 158 U. S. 539, 39 Law Ed. 1082.

[40]Lee Lung v. Patterson, 186 U. S. 168, 46 Law Ed. 1108.

forcement of the Act of 1894 in connection with the Immigration Acts will be considered at a later page.[41]

(c.) By Act of the Parties.

(1.) Loss of Individual Municipal Status.

A merchant or member of the exempt class who has entered on a deficient certificate and is on that account deported has not suffered any loss of status in the sense of having been deprived of a right or privilege conferred upon him under the exclusion acts, because he has never been accorded the right to enter or to remain in the country under those acts. By failure to prove the right to enter in accordance with the provisions of law he has never acquired it; nor does his deportation affect his right to obtain a valid certificate of identity from his own government. For the same reason loss of status does not occur by deportation where the administrative authorities discover that the facts alleged in the certificate on which the applicant was admitted do not exist, since no rights can be deemed acquired by virtue of a certificate which does not contain a true statement of the applicant's standing, or under a certificate illegally issued to him, or which is deficient in its contents.[41a]

Loss of status may occur by virtue of acts done by the party irrespective of whether or not they were in violation of the Chinese exclusion laws. Thus, a Chinese laborer who leaves the United States without taking out the return certificate prescribed by law loses his right to enter, although his failure to procure the same may be due to the fact that at the time of his departure he had no intention of returning;[42] but not, it has been held, where a Chinese laborer, lawfully in the United States, crosses over the Mexican border line, and after a brief stay of two

[41] *Post*, p. 489 *et seq.*

[41a] Chan Tse Cheung v. United States, 189 Fed. 412.

[42] United States v. Tuck Lee, 120 Fed. 989; *In re* Tong Ah Chee, 23 Fed. 441; *In re* same, 18 Fed. 527.

or three days returns to the United States; for to exclude him from admission under such circumstances would be an act not contemplated by the exclusion laws.[43] A merchant who disposes of his property and leaves without the intention of returning and then returns and becomes a laborer loses his former status of merchant.[44] However, the mere fact that a Chinese person engaged in a legitimate mercantile pursuit in the United States chooses to dispose of his stock in trade in this country would not, it would seem, necessarily result in his becoming a member of the laboring class, even for the purposes of the Chinese exclusion law. He might well occupy the position of a retired merchant. If, however, he sought readmission to the United States as a merchant previously engaged in this country in mercantile pursuits he would be obliged, under section 2 of the Act of November 3, 1893, in order to obtain admission on that ground, to prove that he had been constantly employed in the business of a merchant up to the time of his departure. It is thought, moreover, that this particular provision is meant to apply only to those Chinese persons who seek admission for the purpose of retaining and continuing a mercantile business which existed prior to their departure and has continued to exist during their absence—not to confer the privilege of re-entry without a "section 6" certificate on Chinese who have abandoned their business on departure. The proper view seems to be that where such business has been abandoned the returning applicant must obtain and present a "section 6" certificate just as if he was seeking to enter this country for the first time.

Again, rights existing by virtue of the mercantile status

[43]United States v. Lee Yung, 63 Fed. 520; but see United States v. Don On, 49 Fed. 569, and United States v. Ah Sou, 138 Fed. 775, where the court refused to interfere with the order of deportation issued against a Chinese girl when the result of the deportation was to relegate her to a life of slavery.

[44]United States v. May Yim, 115 Fed. 652.

are lost when a Chinese merchant lawfully domiciled in the United States becomes a laborer, although in such case his right to remain in the United States as well as to exercise other privileges inherent to the status of resident laborers are not lost thereby;[45] and, as has already been stated, such rights are not forfeited by a Chinese laborer who was a merchant during the registration period and failed to procure a certificate of registration;[46] but, where a Chinese merchant became a laborer within the registration period and failed to register as required by law, his failure to do so was held to render him subject to deportation in spite of the circumstances of his original entry.[47]

The rights of a Chinese merchant lawfully domiciled in the United States are not lost by the mere fact of a prolonged absence in China, where there is no allegation that his return was accomplished in a manner not prohibited by law.[48] This equally true with regard to Chinese practicing recognized professions who, after having resided in the United States for several years return from a six years' absence in China.[49]

The obligation of resident Chinese laborers to procure return certificates in case they wish to secure their

[45] *In re* Yew Bing Hi, 128 Fed. 319; United States v. Louie Yuen, 128 Fed. 522; United States v. Sun Won Tong, 132 Fed. 190.

[46] United States v. Seid Bow, 139 Fed. 56; *In re* Yew Bing Hi, 128 Fed. 319; United States v. Louie Yuen, 128 Fed. 522; *In re* Chin Ark Wing, 115 Fed. 412; United States v. Sing Lee, 71 Fed. 680.

[47] Cheung Him Nin v. United States, 133 Fed. 391.

[48] United States v. Wong Lung, 103 Fed. 794, and see Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340; *In re* Ah Ting, 23 Fed. 329; but see with regard to the effect of long absence, United States v. Cut Yong, 1 U. S. D. Ct. Hawaii 104; United States v. Cam Yow, *ibid.*, 113; Gee Fook Sing v. United States, 49 Fed. 146; *In re* Louie Yow, 97 Fed. 580. In the case of Lorenzo v. McCoy, 15 Phil. Rep. 559, it was held that a person born of Chinese parents residing in the Philippine Islands during their residence there lost his citizenship "if he ever had it" by leaving the Islands when a minor and staying away in China for eleven years.

[49] United States v. Chin Fee, 94 Fed. 828.

right to return has already been discussed.[50] The fact that a Chinese laborer has left without obtaining the return certificate prescribed by the acts in force has been held to militate conclusively against the right to return even though he has resided continuously in the United States for twenty-one years and remained in Canada for the period of two weeks only.[51]

While departure and absence from the United States without obtaining the return certificate required of Chinese laborers under the law may be said to constitute of itself a bar to the exercise of the right in future of entering or remaining in the United States, there must be an actual departure. Proof of such absence became material in the highest degree during the period in which the Act of October 1, 1888, was in force. That act provided that no Chinese laborer could return to the United States whether he held a return certificate or not.[52] Thus, it was held that Chinese subjects purchasing through tickets and embarking in an American vessel from one part of the United States to another, and not leaving the vessel on touching at foreign ports, did not depart from the United States within the meaning of the Act of 1888,[53] presence on an American vessel constituting presence within the jurisdiction of the United States.[54] Moreover, on this last-mentioned ground, it was previously held that a Chinese laborer who shipped on an American vessel at London prior to the passage of the exclusion acts and remained on board until arrival at an American port, although arriving after the date on which, under the Act of 1882, Chinese laborers might be admitted, was entitled to land.[55]

[50] *Ante*, p. 358; and see United States v. Lim Jew, 192 Fed. 644.

[51] United States v. Don On, 49 Fed. 569.

[52] Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503; United States v. Wong Hong, 71 Fed. 283.

[53] *In re* Tong Wah Sick, 36 Fed. 440; *In re* Jack Sen *et al.*, 36 Fed. 441.

[54] *Ibid.*; *In re* Ah Sing, 13 Fed. 286.

[55] *In re* Mon Can, 14 Fed. 44.

As appears,[56] Chinese seamen or persons employed aboard ship are considered to have a status other than that of laborers and do not lose their right to resume their United States residence on the return of the vessel to this country, merely because they have been permitted by the captain to land for a few hours at a foreign port or place;[57] but their status as such is lost if, while in an American port as members of a vessel's crew, they effect their escape to United States territory;[58] and the courts have further held that a Chinese person employed on a ship of American register is to be deemed for the purpose of the act to be within American territory.[59]

Loss of status has been held to follow acts deliberately performed by the defendants which constitute a violation of the exclusion laws. The act of escape to American soil above referred to, affords a good example. The fact of being a seaman constituting the essence of the right of the defendant to enter the port, the voluntary casting aside of this attribute necessarily puts an end to the existence of any right, claimed or exercised thereunder; and the defendant must stand revealed as a Chinese person whose living is gained by the work of his hands, and must, therefore, be deemed unlawfully in the United States. As stated, the fact that a Chinese person who entered on a merchant's certificate engages immediately on landing in laboring pursuits, while it renders him subject to deportation on the theory that his acts rebut the contents of the certificate,[61] cannot properly be said to subject him to loss of mercantile status, for he cannot be deemed to have acquired the right as a merchant to enter or to remain in

[56] *Ante*, p. 361.

[57] *In re* Ah Tie *et al.*, 13 Fed. 291.

[58] *In re* Mon Can, 14 Fed. 44.

[59] Case of the Chinese Merchant, 13 Fed. 605; *In re* Ah Sing, 13 Fed. 286; *In re* Mon Can, 14 Fed. 44.

[61] Chain Chio Fong v. United States, 133 Fed. 154; United States v. Ng Park Tau, 86 Fed. 605.

the United States. All Chinese persons being by law required to enter at the ports designated by the Act of September 13, 1888,[62] a Chinese person lawfully in the United States who, after securing a return certificate, reenters at any other than a designated port loses thereby his right to remain.[63] Whether or not the wrongful act deprives him of the right to return thereafter by arrival at a designated port presents an interesting question—but one which in the case of Chinese laborers might well, it seems, be answered in the negative, on the ground of failure to obtain the return certificate provided by the act after the wrongful re-entry.

The concurrence of conditions, which, taken collectively, constitute the mercantile status of Chinese persons residing in the United States being defined by statute, must be shown to exist in the case of him who claims to exercise rights thereunder; and it follows that the failure or absence of any one of the indispensable features of the mercantile status gives rise to the existence of a different status or condition. What the resulting status is, depends on the nature of its elements. Thus, if a person having a mercantile status exercises acts of manual labor other than such as are necessary for the conduct of his business as such merchant he ceases to be a merchant as defined by the Act of 1893, and must be held to have the acquired status with which the laws invest those who engage in manual labor—to wit: that of a Chinese laborer. It may be well to point out in this connection that although, as above shown, the loss of status is the result of certain acts, some performed lawfully and some with an unlawful motive, and although the expression "forfeiture of status" is occasionally used when speaking of such cases, the loss thereof cannot be held to be in the nature of the infliction of a penalty. A status is lost because certain of its elements cease to exist, or

[62]Section 7.

[63]United States v. Tuck Lee, 120 Fed. 989.

because the person claiming possession of them does certain acts inconsistent therewith, the performance of which brings about a result in law which is irreconcilable with the original status. Sometimes, as in the case of a person with mercantile interests who engages in manual labor without parting with that interest, the loss of the mercantile interest involves a reversion to the status of laborer. But such a person does not become a laborer because he has ceased to be a merchant, or because he is to be punished for doing the acts of manual labor while a merchant—but because the nature of the acts done establishes the fact that he is a laborer under the law. Thus, a merchant might cease to engage in business and devote his time to study or travel for curiosity or pleasure; he would probably lose his status of merchant thereby, but he would certainly not, under the facts suggested, be a laborer.

It has been held that a merchant who has committed a crime and has been sent to jail at hard labor is, during that time at least, a laborer, and, as such, subject to deportation for failure to register, although the term of his imprisonment extended through the registration period.[64] The court proceeded on the assumption that because the Act of 1893 provided that a Chinese person in order to be a merchant, must not engage in manual labor unnecessary to his business the alien in this case was a laborer; and that because he was a laborer during his imprisonment, and failed to register, he lost the right to remain in the United States. The effect of the decision was to deprive the defendant of his municipal status as a merchant. It is to be observed that it was not the commission of the offense while a merchant, which was taken to constitute the real ground of deportation, but the fact that the court conceived that the labor done in prison changed the prisoner's personal status to that of laborer; and that

[64]United States v. Wong Ah Hung, 62 Fed. 1005; United States v. Ah Poing, 69 Fed. 972; and see same as to laborer, United States v. Chang Fi Koon, 83 Fed. 143.

failure to register as a laborer although in jail at the time of registration, resulted in the loss of his municipal status as a laborer. In order to justify deportation under this act it was necessary, first, that the person deported be a laborer within the meaning of the act, and, second, that while such laborer he had failed to register during the registration period. At the time of his conviction the prisoner was unquestionably a merchant. His municipal rights under the exclusion acts were made to depend absolutely on his vocation. What his vocation was depended upon the nature of the acts in which he was engaged, and there was no question but that up to the time of his conviction he had committed no act of manual labor inconsistent with his mercantile status. The law provides that a Chinese person is a merchant if he is engaged in mercantile pursuits at a fixed place of business conducted in his name, and does not engage in the performance of manual labor except such as is necessary to the conduct of his business as such merchant. Unquestionably the mercantile status of the prisoner would have ceased to exist had he voluntarily divested himself of the attributes designated by law as necessary to establish or maintain the mercantile status. The distinction between the merchant and the laboring class is based wholly upon vocational classification. The law provided that if acts of manual labor necessary for the pursuance of the vocation of a merchant were performed by a Chinese person such acts constituted incontrovertible evidence that his vocation was that of a laborer, not of a merchant. The only distinction made by the very law under which the prisoner was deported was one of vocation. The definition of the term "merchant" has been given; that of laborers is given in the same section as "skilled and unskilled manual laborers"—Chinese "employed" or "engaged" in certain pursuits. It is needless to say that a Chinese merchant arrested for the violation of a state law and convicted to imprisonment at hard labor does not thereby become a

"laborer" within the meaning of the act. He is a Chinese merchant undergoing forced punishment for crime. The act might have provided the loss of mercantile status followed by deportation as a penalty for the commission of crimes by Chinese merchants; but it did not do so. The result of the sentence was in effect to impose deportation as a penalty for the commission of a crime.

(2.) Loss of Communicated Status.

The right of the wife and child to enter in that capacity is dependent on the status of the husband and father to such an extent that forfeiture or abandonment of the right to remain on the latter's part terminates the corresponding right of the wife or child. The fact of the relationship when established does not confer upon either wife or child any distinct status in the sense of an individual and independent political attribute peculiar to her or it. Each has its own status as such wife or minor child to be sure; but it is not a status which includes in its elements the right of either, as a member of an exempt class to enter or to remain in the United States. Thus marriage to a Chinese person entitled to remain in the United States, while it adds further rights to the sum of those which the wife might have exercised, apart from such marital connection, does not vest her with the right to enter or remain in this country independent of the right of her husband to do so. She must enter or remain as the wife of her domiciled husband, or not at all.[65] Should she marry again after the death of her first husband her right to enter or to remain must be determined by that of her second husband; consequently, the wife of a merchant who, on his death, marries a laborer can exercise only such rights of domicile and return as her

[65]United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 544; provided that she does not seek to enter in her individual right as a member of one of the exempt classes.

second husband has,[66] provided that the relationship is set up as the only basis of her right to enter or remain; and in the case of a Chinese woman who lawfully entered the United States before the enactment of the Chinese exclusion laws, and remained, but failed to obtain the required certificate, and thereafter and prior to her arrest, was lawfully married to a citizen of the United States, it was held that she was not subject to deportation under the Act of 1892.[67] Having entered the United States when there was no laws in existence prohibiting such entry she entered lawfully; and even had she come as a single woman after the passage of those laws, it is not seen why, as a matter of law, she might not have come in on a "section 6" certificate, as a Chinese subject traveling for purposes of pleasure or curiosity. Be that as it may, it seems clear that she was not a laborer, inasmuch as the acts do not provide nor do the courts hold that an unmarried Chinese woman *qua* a single woman is a laborer; and that being the case, she would not be under any legal obligation to register as such laborer. The court based its decision on the ground, however, that her marriage to a citizen of the United States communicated to her all the rights of domicile which he could exercise. But in order to exercise the rights communicated by the husband's status the marital relation must be genuine, or rather must have been found to be genuine by the proper authorities; and where a Chinese girl was brought into the United States for immoral purposes and after escaping from these influences was married to a Chinese laborer in the United States, she was held liable to deportation in view

[66]Case of the Chinese wife, 21 Fed. 785.

[67]Tsoi Sim v. United States, 116 Fed. 920; but see in this connection United States v. Cam Yow, 1 U. S. D. Ct. Hawaii 113, where it was held that where the preliminary marriage ceremony was conducted in China and the bride comes to lives with her husband who was in Hawaii at the time, and was allowed to enter on the representation that she was his wife, and where, after entry the marriage ceremony was performed after her arrival in Hawaii, held that she was not the wife of her husband at the time of her arrival, and that she was subject to deportation.

of proof which created considerable doubt as to whether the marriage was regarded as *bona fide* as between the parties themselves.[68] In such a case the defendant could not have been deported on the ground of "communicated status" (*i. e.,* on the ground that she was a laborer), inasmuch as the marriage relationship was not held to have been proven; but deportation might well have been based on the ground that she did not belong to one of the exempted classes. It may be stated in connection with this case that Chinese women practicing prostitution are laborers within the intent of the Chinese exclusion acts.[69] And where the facts show that a Chinese woman was engaged in prostitution at the time of her arrest for deportation, and when on bail during appeal contracted a marriage with a citizen of the United States of Chinese descent obviously for the purpose of avoiding deportation, such facts were held sufficient to show that there was no marriage, but a sham ceremony entered into for the purpose of defeating the object of the exclusion laws, and that under such circumstances she could acquire no rights by virtue of the existence of citizenship in the alleged husband.[70] The *bona fides* of the relationship claimed is a *sine qua non* of admissibility; and although a marriage arbitrated in China on behalf of a Chinese girl and her betrothed, who at at the time was lawfully in the United States was held not to be a valid marriage by the laws of this country the bride was permitted to enter, since it appeared that the marriage was contracted under the laws of China was entered into in good faith.[71]

[68]United States v. Ah Sou, 138 Fed. 775.

[69]Looe Shee v. North, 170 Fed. 566; Lee Ah Yin v. United States, 116 Fed. 614.

[70]Wong Heung v. Elliott, 179 Fed. 110.

[71]*In re* Lum Lin Ying, 59 Fed. 682; but see *contra* United States v. Cam Yow, 1 U. S. D. Ct. Hawaii, 113, where the same state of facts was presented, except that an additional ceremony was performed after the bride was duly admitted, but was nevertheless ordered deported after entry, the court sustaining the order on the ground that the deportee was not married at the time of admission.

With the minor children—adopted as well as actual[72] —as in the case of the wives of Chinese persons, the right to enter or remain in the United States is communicated by virtue of the father's status;[73] and merely because they are not in their own right members of the exempt classes mentioned in the treaty with China of 1880 does not mean that they are laborers.[74] To say that the actual status of the merchant or laborer is communicated to the wife or child would be to allege that the wife or child herself or himself is a merchant, or laborer, as the case may be, which would be contrary to the fact. As the rights which the child enjoys in the absence of any personal status self acquired with increasing years are dependent on the existence of those rights in the father, the extinction of such rights in the latter effects the extinction thereof, as far as the child is concerned. But from the fact of cessation or abandonment of the father's rights it does not follow that the child who has effected a lawful entry into the United States loses thereby his right to remain. What those rights are must be determined by the nature of the independent status thus suddenly thrust upon him; and the nature of this status is to be determined by the course of conduct which he pursues. Thus, where a Chinese minor child entered the United States lawfully as the child of a Chinese merchant domiciled in the United States, the return of the father to China *sine animo revertendi* was held to interrupt the communication to the son of the rights flowing from the father's mercantile status, and the former's status, although still a minor nineteen years of age, was determined by his own occupation—which, being that of a laborer during the registration period rendered registration as to him an absolute requirement.[75]

[72]United States v. Joe Dick, 134 Fed. 988.

[73]United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 544; United States v. Foo Duck, 172 Fed. 856.

[74]*In re* Lee Yee Sing, 85 Fed. 635.

[75]United States v. Joe Dick, 134 Fed. 938.

But where, under identical circumstances of entrance the alien only performed occasional acts of manual labor it was held that he was not subject to deportation.[76] And the status enjoyed by the minor child of a merchant domiciled here by virtue of his relationship to his father is not lost where, after lawful entry and an unsuccessful business venture, he works occasionally in a laundry pending a re-establishment in a new mercantile business.[77] There is no good reason why the mere fact of the minority of the son during the father's presence in the United States should prevent the former from acquiring a status of his own, whether that of merchant, student, or laborer, provided that he is competent to select and perform the acts necessary to an individual status; but it seems that the mere performance of manual labor by the son of a domiciled merchant interspersed with periods of study does not alter his status as a merchant's minor son; and the fact that since his majority he has worked as a laborer does not make his residence in the United States unlawful where he became a laborer after the registration period.[78]

2. Under the Immigration Laws.

(A.) Acquisition. (In General.)

It has been said that the purpose of the exclusion acts was to prohibit the entrance of all Chinese except those especially exempted, while the intent of Congress in passing the laws on immigration was to allow all aliens to enter except those to whom entrance was expressly prohibited.[79] There is little in the treaties with China or in the acts themselves to warrant the unqualified acceptance of this assertion; the Supreme Court has indeed on more

[76]United States v. Foo Duck, 172 Fed. 856.

[77]United States v. Yee Wong Yeun, 191 Fed. 28, and see United States v. Foo Duck, 172 Fed. 856.

[78]United States v. Foo Duck, 163 Fed. 440.

[79]United States v. Crouch, 185 Fed. 907.

than one occasion expressed with regard to the purpose of the Chinese exclusion acts a contrary view. While Chinese persons of the exempt classes are under the obligation of presenting to the port authorities at the time of entrance a certificate of identity duly issued by their government, an equal obligation rests upon those authorities to admit the applicant in the absence of evidence indicating that the certificate has been fraudulently obtained. In other words all Chinese except those of the laboring class are at liberty to enter and remain in the United States on presenting the credentials required by law. The provision requiring the presentation of these certificates to members of the exempt classes has been looked upon by the highest authority as an aid rather than an obstacle to their admission. "The certificate," says the Supreme Court in the Lau Ow Bew case,[80] citing a former lower court decision with approval, "is evidently designed to facilitate proof by Chinese other than laborers coming from China and desiring to enter the United States, that they are not within the prohibited class. It is not required as a means to restrict their coming. To hold that such was its purpose would be to impute to Congress a purpose to disregard the stipulation of the new treaty that they should be allowed to go and come of their own free will and accord." And in cases where such persons were not in a position to obtain the certificate they have been allowed to enter without it, on submitting other proof of their vocational standing.[81] It is true that the burden of proof of the right to enter is on the Chinese applicant for admission in the sense that he cannot enter except on presentation of the proper papers; but on the other hand the law provides that those papers, duly executed, issued, and presented, constitute evidence of his right to enter which the

[80]Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.

[81]Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340; *In re* Ah Ping, 23 Fed. 329.

Government must overthrow in order to afford justification for his exclusion.

Irrespective, however, of the precise purpose of the provision requiring the presentation of certificates by Chinese of the exempt classes the fact remains that they can enter only on the presentation of the certificate, whereas under the immigration acts no such credentials are required of alien subjects of other than Mongolian nations. Under those acts the test of admissibility is one of personal qualification, irrespective of class—excepting that of alien contract laborers—and the only cases in which positive proof of eligibility is required from the aliens themselves are those of aliens whose ticket or passage has been paid for with the money of another, or who have been assisted by others to come to this country. In other words, evidence of eligibility under the exclusion laws must be given by the applicants themselves, while under the immigration laws evidence of ineligibility must be found by the Government in order to justify exclusion. But under both sets of laws a favorable decision by the immigrant officers based on examination at the time of entrance it is necessary in order that the applicant may lawfully acquire a municipal status under either.

Acquisition of municipal status under the immigration act means simply the process of being admitted into the United States after examination by the immigration authorities in accordance with the provisions of law and the rules and regulations of the Department of Commerce and Labor. Aliens are not classified for the purpose of determining their eligibility by vocation, but by mental, moral or physical qualifications. The foreign laborer, provided that he does not come to the United States under contract to perform services here, is as free to enter as the foreign merchant or financier; and the disabilities which would bar the former, would be equally effective to forbid entrance to the latter. Under the Chinese exclusion acts the Chinese laborer is excluded because he belongs to the

laboring class, not because of any mental, moral or physical failing which would make him an undesirable addition to our national community; under the immigration statutes the alien is forbidden entrance, not as a member of a class, but because, as an individual, he may, if admitted, prove a menace to the peace, health, or prosperity of the people of the United States. In short, the Chinese exclusion acts constitute legislation directed against a class; the immigration law, legislation against the individual.

This being so, it necessarily follows that the doctrine of communicated status so fully recognized in the application of the exclusion laws has no place in the immigration law. Under the former the only tests of eligibility are membership in the exempt classes and the presentation of the special kind of proof of such membership as is required by law. The wives and minor children of exempt Chinese lawfully admitted to residence in this country, seeking admission *by virtue of that relationship* to one whose right to enter has already been proven, are admitted—not, to be sure, on the claim that they as individuals are members of a class specifically designated as exempt from exclusion by the treaty—but merely because the nature of the relationship shown, in connection with the personal status of the husband or father is such as to negative the idea that the applicants could belong to the laboring class. This being so, and since the wife or minor child *as such* are unable to obtain the certificate on the presentation of which alone members of the exempt classes can be admitted under the Act of 1882, the right of the husband and father, duly established as such member, is held to be communicated to the wife or minor child.

Under the immigration law, however, the right of the alien husband and father to enter is based, not on the fact that he belongs to a class in itself exempt from exclusion, but simply because, as an individual, he has been found to be free from disabilities which operate to ex-

clude. It is plain that where a right is based solely on absence in the individual of mental, moral, or physical defects such a right, based as it is on the existence of a condition exclusively peculiar to a given person, is incapable of transmission to another, precisely because of the fundamental difference between individuals.

But, although as between aliens the marital or parental relationship cannot, for the reasons stated, give rise to a communicated status based on rights acquired by the alien husband or father who has entered the United States, it plays nevertheless a most important part in questions of the admissibility under the immigration law of persons of foreign birth. The laws of the United States provide that alien women who marry citizens of the United States become thereby citizens of this country, and that under certain conditions the naturalization of the father vests his children with the attribute of American citizenship which he himself has assumed. No question can, of course, arise as to the exemption of all American citizens from the operation and effects of the immigration laws; but considerable doubt has of late been expressed as to whether or not those laws apply to women of foreign extraction who, possibly for the purpose of exempting themselves from the operation of the act, marry American citizens at a time when as aliens, they could not, by reason of some disability which would afford a ground for their exclusion or expulsion, claim the right to enter or remain in the United States. Indeed, some of recent decisions have gone so far as to hold that alien women who cannot claim this right are not "capable of naturalization" under the citizenship or naturalization laws of the United States, and that a marriage contracted with an American citizen during the existence of a disability cannot vest them with United States citizenship. The possibility of such a question arising in connection with the Chinese exclusion acts is precluded by the fact that Chinese cannot be naturalized under the Constitution and laws of this country.

Moreover, no question of the communication of status is raised under the immigration acts in considering the right of such women or children of foreign extraction to enter or remain in the United States. As already stated, personal qualification is not a communicable element. The rights of such persons depend solely on whether or not they are citizens of the United States, and this in turn depends on whether the pertinent provisions of the immigration acts are to be read in *pari materia* with the laws governing the acquisition of citizenship by persons of foreign birth.

The question of the effects of the acquisition of a commercial domicile by Chinese of the exempt class on their right to enter or to remain in the United States has already been discussed[82] in connection with the effect of the Act of August 18, 1894 upon rights claimed under the Chinese exclusion laws. That act provided that the excluding decision of the Secretary of the Treasury—now of the Secretary of Commerce and Labor—should be final with respect to the right of any alien to enter this country who might seek admission under any law or treaty. As no Chinese person—except diplomatic officers and their suites—can lawfully enter the United States except under rights conferred by treaty, the Act of 1894 necessarily included all Chinese persons other than those above designated in its provisions. Not so with regard to aliens generally. Until the Act of March 3, 1903, went into effect it was universally held by the courts that the excluding provisions of the immigration acts did not apply to aliens not coming to the United States for the first time, but for the purpose of resuming a domicile already lawfully acquired. Since the passage of that act there has been a division of judicial opinion on this point, the grounds of which will be considered in detail in subsequent pages.[82a] The real question at issue in this connection is

[82] *Ante*, p. 357.

[82a] *Post*, p. 427.

not whether a lawful domicile previously acquired removes the alien from the operation of the excluding provisions of a law to which, in the absence of such domicile, he would have been in terms subjected, but whether it was the intention of Congress to exclude aliens who have already lawfully established their homes in this country—in short, whether aliens already lawfully domiciled in the United States and who return here from a visit abroad are seeking to enter or to return "under any law of the United States."

(B.) Through the Acquisition of American Citizenship.

Acquisition of municipal status under the immigration law is, of course, possible only to those who on seeking to enter the United States, are subject to the provisions of that law. Aliens who have been admitted to this country through the favorable decision of the proper immigration officers can be said to have acquired a municipal status, by virtue of the operation of those laws, but, if through one cause or another an alien has from any other legitimate source acquired the right to enter and reside in the United States the immigration acts are not applicable to him, and the municipal status which he acquires on entering the country exists independent of any provision of the special statute governing the admission of aliens. This principle is generally conceded.

As the immigration act purports to include in its operation all aliens, or at least all aliens seeking to "enter" the United States, a status which will exempt persons seeking tc enter from the operation thereof must be incompatible with the condition of alienage. It is conceded that persons not aliens in the sense of the immigration act are not subject to its provisions.[83] Since it is admitted that, generally speaking, citizenship acquired by naturalization or mar-

[83]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130; Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

riage removes the person claiming it from the operation of the immigration laws, and that citizenship may be acquired by this process, why is it, when there is no dispute as to the actual facts on which the right to enter is based, that the Department of Commerce and Labor takes the view, and the courts have more than once held that such persons are subject to the operation of those laws? Merely because it is contended that granting that conditions may exist under which citizenship may be acquired by aliens, they cannot exist when at the time the resulting exempting status is ought to be established the person desiring to acquire it is suffering from disabilities which, if an alien, would render him excludable under the provisions of the act.

With certain rare exceptions, noted later,[84] the only political status other than alienage known to our law is citizenship. This can be acquired in one of two ways, by naturalization or marriage; for, citizenship resulting from the fact of birth cannot be said to be "acquired." The question to be determined, then, is how far, if at all, rights claimed by virtue of naturalization or marriage to an American citizen are affected by the provisions of the immigration law; in other words, under what circumstances, if any, aliens giving proof of the existence of a state of facts, which under the general laws of the United States dealing with the subject, ordinarily gives rise to a change in political status, are subject to the operation of the immigration laws.

(1.) By Naturalization.

The right of aliens to acquire citizenship in the United States is purely statutory.[85] "The fourteenth amendment of the Constitution," says MR. JUSTICE GRAY, speaking for the court, in the case of United States v. Wong Kim Ark,

[84]That occupied by natives of Porto Rico and the Philippines.

[85]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; United States v. Rodgers, 185 Fed. 334.

"in the declaration that 'all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside' contemplates two sources of citizenship, and two only: birth and naturalization. Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States and subject to the jurisdiction thereof becomes at once a citizen of the United States and needs no naturalization. A person born out of the jurisdiction of the United States can only become a citizen by being naturalized either by treaty, as in the case of the annexation of foreign territory; or by authority of Congress, exercised either by declaring certain classes of persons to be citizens, as in the enactments conferring citizenship upon foreign-born children of citizens or by enabling foreigners individually to become citizens by proceedings in the judicial tribunals, as in the ordinary provisions of the naturalization acts." [86]

When the claim to admission is based on citizenship, either as the necessary result of birth in this country or acquired by any one of the different processes of naturalization, the facts being admitted, the political effect of those facts or combinations of facts generally involves no question of immigration law. In ordinary cases, only one question presents itself to the solution of the immigration officers—whether or not the person presenting himself for admission is personally qualified under the immigration law to enter. If found to be suffering from disabilities which operate to exclude, the applicant is without more assigned for deportation. But it frequently occurs that, granting the existence of disabilities which would be fatal to his admission if an alien, the claim is made

[86]United States v. Wong Kim Ark, 169 U. S. 649, 42 Law Ed. 890.

that the applicant is a citizen of the United States, supported by allegation of the existence of facts from which the political status of citizenship purports to result. This raises at once a new issue of fact—that is, whether the facts from which the exempting status is alleged to result are as represented. This question being decided by the examining officers in the affirmative, there remains only the pure question of law as to whether the political results of those acts is American citizenship; and this would seem to depend wholly on those laws of the United States which designate how and when American citizenship can be acquired.

The naturalization of an alien changes his political status from that of alienage to citizenship and may affect the political condition of his wife and minor children. As regards the alien himself, his naturalization is, of course, sufficient to remove him from the operation of the act, but the mere declaration of intention does not change his political status of alien to that of citizen.[87] The fact of naturalization being shown, the applicant must be admitted as a matter of course, not because he has proven his right to admission under the immigration acts but because he has shown that immigration officers have no jurisdiction over him whatsoever.

All such cases necessarily involve no question of the acquisition of a municipal status under the immigration law, but, on the contrary, the proof of a political status which places the party beyond the reach of the provisions of that law.

(a.) Effect of the Naturalization of the Father on His Minor Children.

Section 1993 Revised Statutes[88] provides that "all children heretofore born or hereafter born out of the limits

[87] *In re* Kleibs, 128 Fed. 656; *In re* Moses, 83 Fed. 995; Maloy v. Duden, 25 Fed. 673; Sanz v. Randall, 4 Dill. 425.

[88] Act February 10, 1885, c. 71, st. 1, vol. 10, p. 604.

and jurisdiction of the United States whose fathers were or may be at the time of their birth citizens thereof are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States." This provision applies with equal force to the children of native-born and naturalized citizens. That they are to be considered American citizens has been judicially determined even though the parents are permanently residing abroad;[89] and the same result is bound to follow where the residence is temporary.[90] Section 2172 of the Revised Statutes[91] provides that "the children of persons who have been duly naturalized under any law of the United States—being under the age of twenty-one years at the time of the naturalization of their parents shall, if dwelling in the United States, be considered as citizens thereof;" and section 5 of the Act of March 2, 1907,[92] provides "that a child born without the United States of alien parents shall be deemed a citizen of the United States by virtue of the naturalization of or resumption of American citizenship by the parent: *Provided,* That such naturalization or resumption takes place during the minority of such child: *And provided further,* That the citizenship of such minor child shall begin at the time such minor child begins to reside permanently in the United States."

It has always been admitted that the naturalization of the father results in the naturalization of a minor child provided that the child has been at the time and subsequent to the naturalization of the father, and during its minority, a resident of this country.[93] But until naturali-

[89]See Oldtown v. Bangor, 1870, 58 Me. 353.

[90]Sasportas v. De la Motta, 1858, 10 Rich. Eq. 38.

[91]Act April 14, 1902, ch. 28, sec. 2, vol. 4, p. 155.

[92]34 Stats. 1228.

[93]Campbell v. Gordon, 1809, 6 Cranch 176, 183; *In re* Morrison, 1861, 22 How. Pr. 99; People v. McNally, 1880, 59 Howard Pr. 500; State v. Mins, 1879, 26 Minn. 183; Prentice v. Miller, 1890, 82 Cal. 570; Dorsey v. Brigham, 1898, 177 Ill. 250.

zation is complete no power to confer it upon the child can exist in the father. Therefore, the mere declaration of intention, incomplete in itself to vest the father with citizenship, cannot change the existing political status of the minor child.[94] Thus it was held in the case of *In re* Moses[95] that the wife and children of an alien who had been admitted into the United States and had established his domicile here could not prove their exemption from the operation of the immigration act by showing that the father had done no more toward acquiring American citizenship than to file his declaratory oath under the naturalization statute. But even if he had become a citizen, his children not having dwelt in the United States, could not have successfully urged their claim to citizenship. That alien minors who have never dwelt in this country cannot claim exemption from the operation of the immigration laws through the naturalization of their father was decided by the Supreme Court of the United States in the case of Zartarian v. Billings.[96] There a former Turkish subject became naturalized in 1896, and some years after his naturalization sent for his wife and minor children to join him in this country. The daughter was found to be afflicted with trachoma, which, under the Immigration Act of March 3, 1903, excluded her as an alien from admission. It was contended that the immigration act had no application to her, as by the naturalization of the father, she herself became naturalized; but the court held that, being born abroad, a native of Turkey, the applicant could not become a citizen of the United States except in compliance with the terms of section 2172 of the Revised Statutes; that, never having legally landed in the United States, she could of course never have dwelt here and, never having dwelt here, did not come within the terms

[94]Henry v. Hull, 1892, 6 N. Mexico 643, 660; *In re* Conway, 1863, 17 Wis. 526.

[95]83 Fed. 995.

[96]204 U. S. 170, 51 Law Ed. 428.

of the statute. Her right to entry was then bound to be based on her qualifications as an alien; and these failing to meet the requirements of the immigration act, no right to enter could exist. The applicant was at a peculiar disadvantage since her passport had been granted her by the Turkish authorities on the condition that she could never return to Turkey. She was ordered deported, but as Mr. Van Dyne observes, "at this juncture the doctors at the hospital pronounced her cured, the Department of Commerce and Labor issued an order for her release, and she was allowed to join her parents." [97] The conclusion reached by the Supreme Court had already been enunciated by the Circuit Court of Appeals,[98] and the principles leading thereto have since been invoked and applied by the Federal courts on more than one occasion in connection with their application to the immigration law.[99] Conversely, it has been held that when the father of an alien minor child becomes a naturalized citizen, the child, if dwelling in the United States at or after the naturalization of the father, is not subject on re-entry to the jurisdiction of immigration officers.[100] It follows, *a fortiori,* from the doctrine laid down in the Zartarian case, that if the naturalization of the father cannot vest his minor child who has never yet lived in this country with a status which exempts him from the operation of the act, the mere declaration of intention by the father is powerless to do so. It was so held in a comparatively early Federal decision,[1] and the contrary opinion expressed in a later case[2] cannot, it would seem, be regarded any longer as an authority.

[97] Van Dyne on Naturalization, 207.

[98] United States v. Williams, 132 Fed. 895.

[99] United States v. Rodgers, 182 Fed. 274; United States v. Rodgers, 185 Fed. 334.

[100] United States *ex rel.* Fisher v. Rodgers, 144 Fed. 711.

[1] *In re* Moses, 83 Fed. 995.

[2] *In re* Di Simone, 108 Fed. 942; reversed on confession of error.

(b.) Effect of Naturalization of the Husband on the Wife.

Section 1994 of the Revised Statutes[3] provides that "any woman who might lawfully be naturalized under the existing laws, married, or who shall be married to a citizen of the United States, shall be deemed and taken to be a citizen."

Where the fact of marriage to an American citizen is made the basis of the claim to enter, the first question to be determined by the immigration authorities is whether the marital status actually exists as represented. The mere perfunctory performance of the marriage ceremony entered into for the sole purpose of evading immigration or exclusion acts means nothing; there must be a *bona fide* marriage between the parties. Whether such a relationship exists is a pure question of fact to be finally determined by the administrative officers; and if they find that the marriage was a sham, exclusion or expulsion will result as a matter of course.[4] Again, if the marriage would be held void on grounds of public policy if performed in the United States, the fact that it was legal in the jurisdiction where the relationship was originally entered into cannot avail the parties. Thus, where a former Russian subject who, as a naturalized American citizen, returned to Russia, there contracted a marriage with his niece, and returned to the United States with the woman and an idiot child, the court held that the marriage relation, being incestuous and absolutely void by the laws of the state at the port of which the parties presented themselves for admission, could afford no ground on which to base the right to enter.[5]

Again, where naturalization by marriage is urged as against the right of the state to exclude under the immi-

[3]Act February 10, 1855, c. 71, s. 2, vol. 10, p. 604.

[4]Looe Shee v. North, 170 Fed. 566; United States v. Sprung, 187 Fed. 903; Wong Heung v. Elliott, 179 Fed. 110.

[5]United States v. Rodgers, 109 Fed. 886.

gration laws, it is plain that the woman claiming citizenship must come within the terms of the naturalization statute in order to benefit by its provisions. Since, at no time have persons of Chinese nationality been capable of lawful naturalization under the laws of the United States,[6] it has been held that the claims of Chinese women to enter or remain in this country based on the *acquisition of American citizenship* by marriage to American citizens cannot affect the right of the Government to exclude or expel them as aliens in accordance with the provisions of the exclusion or immigration laws.[7] There can be no question, however, that a Chinese woman who marries a citizen of this country and makes the United States her homes acquires through the fact of her husband's citizenship all the rights, exclusive of those of a political nature, which he himself enjoys.[8] It may be added that there seems to be good ground for believing that, should an American citizen during a visit to China marry a Chinese lady and return with her as his bride to his home in the United States, she would not, on account of her foreign origin, be excluded either under Chinese exclusion acts or on grounds of personal disability under the immigration act. To impute to the treaty-making power or Congress the intention to exclude Chinese wives of American citizens would be absurd; and the Supreme Court has already held in the Gonzalez case[9] that allegiance, in the sense of being subject to the national control of the United States, can exist without citizenship; and that persons owing allegiance to the United States are not aliens in the sense that the term is used in the immigration acts. An American citizen is at liberty to marry whomsoever he

[6]See Fong Yue Ting v. United States, 149 U. S. 698, 37 L. Ed. 905; United States v. Wong Kim Ark, 169 U. S. 649, 42 Law Ed. 890; *In re* Gee Hop, 71 Fed. 274.

[7]Wong Heung v. Elliott, 179 Fed. 110; Looe Shee v. North, 170 Fed. 566.

[8]Tsoi Sim v. United States, 116 Fed. 920.

[9]Gonzalez v. Williams, 192 U. S. 1, 48 Law Ed. 317.

will; and while naturalization is a personal privilege,[10] the principle that the wife's allegiance follows that of her husband, particularly where she voluntarily submits herself to the laws of the state of his residence, will not lightly be denied.[10a]

Granted that a *bona fide* marriage has taken place as between the parties—that the marriage is such as is countenanced by our laws, and that in so far as the particular case is covered by the laws of the United States, above set out, dealing exclusively with the acquisition by marriage of citizenship by women of alien extraction the applicant is one "who might herself be naturalized" by virtue of such marriage—it would seem that the status resulting from the state of facts and law above set out would be such as to exempt the applicant from the operation of the immigration acts. The precise question is, however, still left open. Three different views have been expressed: First, that the marriage of an alien woman to an American citizen, native born or naturalized, *ipso facto* vests her with American citizenship and exempts her from the operation of the immigration statutes. Second, that citizenship cannot be acquired by virtue of the marriage relationship unless the wife is a resident of the United States. Third, that the fact of such a marriage cannot operate to divest the application of the immigration law

[10]White v. White, 1859, 2 Met. (Ky.) 185, 191.

[10a]In the very recent case of Suey *et al.* v. Backus, decided by the Supreme Court of the United States June 7, 1912, the facts were that a Chinese woman married a citizen of this country, came here, gave birth to a child in wedlock, but subsequently entered a house of prostitution. The court conceded her right to enter and remain in the United States as the wife of an American citizen, but held that, being incapable of being naturalized she remained an alien, and that her right to enter or remain was subject to forfeiture by the commission of improper acts which constituted a violation of the immigration statutes. Incidentally the decision shows that citizenship cannot be the result of a communicated status, and that the rights incident to such status may be lost by the act of the beneficiary as well as by the cessation of the original status held by the person from whom the rights flow.

when the woman would otherwise be excludable thereunder, irrespective of whether she is or is not a resident of the United States.

On the first point, the weight of authority tends to the view that the fact of marriage takes the case beyond the scope of the immigration authorities.[11] The principle involved in the second was enunciated by way of *dicta,* the issue being the granting of naturalization papers to an alien whose wife had never resided in this country and who was excludable under the immigration act.[12] In applying the principle expressed in the third view the court was apparently influenced by the conviction that the marriage although *bona fide* and performed when both parties were within the territorial limits of the United States was consummated for the purpose of avoiding the operation of the immigration law.[13] On this point the decision is, however, in direct conflict with an earlier opinion rendered in the second Federal Circuit to the effect that where an alien woman of French extraction while in detention pending deportation married an American citizen, she was *ipso facto* entitled to her release, or in case of refusal, to her immediate discharge on *habeas corpus* by virtue of her acquisition of American citizenship.[14]

The conflicting opinions expressed by the courts in the first two views above set out are merely the result of two opposing interpretations of the laws of the United States providing for the acquisition of citizenship by persons of foreign extraction, and do not involve a consideration of the effect upon those laws, if any, of the excluding provisions of the immigration act. The third view is based

[11]United States v. Sprung, 187 Fed. 903, in dissenting opinion, but majority did not pass on this point, holding that marriage was colorable; *In re* Nicola, 184 Fed. 323; Hopkins v. Fachant, 130 Fed. 839; Woey Ho v. United States, 109 Fed. 888.

[12]*In re* Rustigian, 165 Fed. 980.

[13]*Ex parte* Kaprielian, 188 Fed. 694.

[14]Hopkins v. Fachant, *supra.*

on the assumption that the laws dealing with the acquisition of American citizenship do not of themselves cover the subject and that whether or not, in a given case, United States citizenship has been acquired depends on whether the person claiming to have acquired it was qualified, under the immigration act, to enter or remain in the United States; and this view appears to be shared by the court which announced the principle that a woman of foreign origin who has not or is not residing in this country cannot acquire United States citizenship by marriage to an American citizen.[15] There the court said: "It is no part of the intended policy of section 1994,[16] or of the naturalization laws, that they should annul or override the immigration laws." And again: "The immigration acts have.....added to the classes of persons who are incapable in their own right of naturalization. It is not enough under existing law that the applicant for admission to the country be a 'free white person.' She must also be a person not within the classes excluded by the immigration laws." And later: "If, however, it was the intention of Congress in enacting section 1994 to confer citizenship upon any person who has never been within the territorial jurisdiction of the United States, it seems entirely unreasonable to hold that it was the intention of Congress to confer American citizenship upon an alien who is excluded by the immigration acts from admission to the country." The question before the court was, however, simply whether it should grant the application for citizenship of an alien whose wife was at that time attempting to enter the United States but disqualified under the provisions of the immigration act; and the court stated in its decision that it was exceedingly doubtful if the petitioner who seeks to bring into this country a person with a dangerous contagious disease can meet the require-

[15] *In re* Rustigian 165 Fed. 980.

[16] United States Comp. St. 1901, 1268.

ment of the naturalization act[17] and make it appear to the satisfaction of the court that he is well disposed to the good order and happiness of the United States." In reality no question of immigration law was involved in the case; the one point to be decided was whether, in view of the existing circumstance, the petition for citizenship should be granted; and the court, being apparently of the opinion that to grant the petition might result disadvantageously to the national community, refused, in the discretion vested in it by law, to do so.

The contention of those courts opposed to the general view is, in a word, that citizenship cannot be acquired by marriage by a woman of foreign extraction (1) where she has never been a resident of this country (2) where she is excludable under the immigration laws.

a. Residence of Wife in This Country.

Where the sole claim of the right to enter is citizenship, and the applicant is excluded on the ground that, not having resided in the United States, she cannot have become a citizen, the legal question raised, as before stated, is purely one involving the principles of the laws of citizenship and naturalization. As already intimated where the courts have had occasion to pass upon this point, directly or by unavoidable inference, in connection with the jurisdiction of the immigration authorities over women of foreign birth seeking admission to the United States, the weight of authority is that no such jurisdiction exists. But in order to suggest a satisfactory conclusion it is necessary to go beyond the field of those decisions, dealing primarily with questions peculiar to the immigration laws, and examine the trend of judicial opinion the object of which was to interpret those acts of Congress by virtue of which alone alien women are enabled to acquire citizenship by marriage with citizens of this country. In

[17]Act June 29, 1906, c. 3592, s. 4, par. 4, 34 Stat. 598; U. S. Comp. St. Supp. 1907, p. 4227.

the Rustigian case, the court said: "It is difficult to justify an interpretation of section 1994 which makes it applicable outside the territorial jurisdiction of the United States and which attributes to Congress an intention to change the political status of alien women resident in the country of their nativity and who have never come within our territory." The following citation from Van Dyne on Naturalization is made: "Whether under this law residence in the United States is essential in order to confer citizenship on a woman of foreign nationality married to a citizen of the United States is not entirely well settled, although the better view appears to be that such residence is necessary."

This question has been on many occasions submitted to the determination of the judicial and administrative branches of the Government. Mr. Moore, in Vol. III, p. 456, of his International Law Digest, says: "That statute (of 1855) applies to a woman married to a citizen of the United States irrespective of the time or place of marriage or the residence of the parties;[18] even though the woman lived at a distance from her husband and never came to the United States until after his death." [19] In construing the Act of 1855, the Supreme Court of the United States has said:[20] "As we construe this act, it confers the privileges of citizenship upon women married to citizens of the United States, if they are of the class of persons for whose naturalization the previous acts of Congress provide. The terms "married" or "who shall be married" do not refer, in our judgment, to the time when the ceremony of marriage is celebrated, but to a state of marriage. They mean that whenever a woman, who, under previous acts might be naturalized, is in a state of mar-

[18]Citing Kelly v. Owen, 7 Wall. 496, 19 Law Ed. 283; United States v. Kellar, 11 Biss. 314; Williams, Atty. Gen., 1874, 14 Op. 402.

[19]Citing Kane v. McCarthy, 63 N. C. 299; Headman v. Rose, 63 Ga. 458.

[20]Kelly v. Owen, 7 Wall. 496, 19 Law Ed. 283.

riage to a citizen, whether his citizenship existed at the passage of the act or subsequently, or before or after the marriage, she becomes by that fact, a citizen also. His citizenship, whenever it exists, confers, under the act, citizenship upon her. The construction which would restrict the act to women whose husbands, at the time of marriage, are citizens, would exclude far the greater number, for whose benefit, as we think, the act was intended. Its object, in our opinion, was to allow her citizenship to follow that of her husband, without the necessity of any application for naturalization on her part; and, if this was the object, there is no reason for the restriction suggested.

The terms, 'who might lawfully be naturalized under the existing laws,' only limit the application of the law to free white women."

In Burton v. Burton[21] the court expressed itself as follows: "The Act of 1855, therefore, as we glean from this previous legislation, though unfinished, the history of the legislative object to be attained by it, and as well the general considerations which influence nations in framing naturalization laws, was designed, certainly, for the benefit of an alien white woman, *whether resident or not,*[21a] married to a person who was at the time of the marriage a citizen of the United States, thus securing, by the same law, the rights of citizenship to the children of American citizens born abroad, and to such alien wife all legal rights of citizenship, which otherwise, and by reason of her alienism, she might possess."

The decision from which the foregoing extract is made held that the widow who had married her husband prior to his naturalization and who had not come to this country until after his death did not become thereby a citizen of the United States. The decision turned on the point of the husband's alien status at the time of marriage, and

[21]26 How. Pr. 474.

[21a]Italics ours.

the view was expressed that because the wife did not come to this country until after her husband's naturalization and death she continued to be an alien. But, as has been seen, five years later the Supreme Court held that formal naturalization was not essential to the acquisition of citizenship by the wife; and in Kane v. McCarthy, decided in 1869 (quoted *post*) the view is taken that it is immaterial whether the naturalization of the husband occurs before or after marriage.

In Leonard v. Grant,[22] the court, following the doctrine expressed in Kelly v. Owen,[23] held that the act of marriage conferred citizenship on the wife without the necessity of any application for naturalization on her part, saying that: "The phrase 'shall be deemed a citizen' in section 1994, Revised Statutes (U. S. Comp. Stat. 1901, 1268), or as it was in the Act of 1855 (10 Stat. at L. 604, chap. 71, sec. 2), 'shall be deemed and taken to be a citizen' while it may imply that the person to whom it relates has not actually become a citizen by the ordinary means or in the usual way, as by the judgment of a competent court, upon a proper application and proof, yet it does not follow that such person is on that account practically any the less a citizen."

The inference is unavoidable that presence in the United States is not a prerequisite to the acquisition of citizenship by the wife. The language of the court in the case of Kane v. McCarthy, 1869,[24] reasserts the doctrine in the following words: "It is not the ceremony of marriage, or its time or place, but it is the fact of being "married to"—that is, being the wife of—a citizen that makes the wife a citizen—that makes the woman a citizen. The circumstance that her husband was not a citizen at the time of marriage is wholly immaterial, for he became a citizen afterwards, *ipso facto*. So she, being a free white

[22] 5 Fed. 11, 17.
[23] *Ante*, p. 389.
[24] 63 N. C. 299.

woman married to a citizen, comes within the description and the very words of the Act of Congress, 'and is deemed and taken to be a citizen,' for it is the status of being married to—being the wife of a citizen—that makes her one. It can in no possible view make any difference whether the marriage ceremony is performed first, and then the husband becomes a citizen or whether he becomes a citizen first, and the marriage afterwards takes place. Whenever the two events occur and come together, 'she is a woman married to a citizen.' The thing seems to us too plain to admit discussion; it is like trying to prove that two added to two makes four."

From the decision in the case of Ware v. Wisner,[25] it appears to be immaterial that the parties at the time of marriage are residing outside the jurisdiction of the United States; and in the case of Halsey v. Beer,[26] the court held that where a naturalized American returned to his country of origin, and married a foreign woman, the wife became an American citizen by marriage, although both parties remained abroad after their marriage.[27] In Headman v. Rose,[28] the husband of an alien wife never came to this country until many years after his death; yet the court held that the naturalization of the husband made the wife a citizen of the United States. The Attorney General, in an opinion rendered in 1874, involving the interpretation of the Statute of 1855,[29] reached the same general conclusion, asserting that "irrespective of time or place of marriage or the residence of the parties, any free white woman married to a citizen of this country is to be taken and deemed a citizen of this country." And conversely it has been held that where a citizen of the United States leaves his wife in this country and

[25] 50 Fed. 310.
[26] 52 Hun. 366.
[27] Doc. No. 326, 59th Cong., 2d Session, p. 150.
[28] 63 Ga. 458.
[29] Op. Atty. Gen., XIV, p. 402.

become naturalized in a foreign state, his wife became a citizen of that state even though she remained in this country.[30]

Mr. Van Dyne, after citing in his book on Naturalization, p. 234, some of the cases which hold that to acquire American citizenship by marriage a woman of foreign extraction need not reside in this country, quotes but one judicial decision, Burton v. Burton,[31] as holding the opposite view. But, as before pointed out,[32] the court stated flatly in that case that the Act of 1855 "was designed certainly for the benefit of an alien white woman, *whether resident or not,* married to a person who was at the time of the marriage a citizen of the United States." Dower was refused on the ground that the husband was not, when he married her, a citizen of this country, and furthermore because, not having come to the United States, she continued to be an alien at the time of the marriage, and the subsequent acquisition by him of the citizenship status was insufficient to confer citizenship on the wife. But the Supreme Court subsequently held that the husband's citizenship whenever it exists confers, under the act, citizenship upon the wife, irrespective of whether his citizenship existed before or after the marriage.[33] The language cited from the Burton case shows that, had the court taken the Supreme Court's view on this point the question of the wife's residence in this country would have been immaterial.

The Department of State has at various times had occasion to pass on this subject, and has taken the view that the effect of a marriage between an alien woman and an American citizen, performed in the presence of an American consular officer, as provided by section 4082

[30]Kircher v. Murray, 54 Fed. 617; but see Ruckgaber v. Moore, 104 Fed. 947.

[31]*Ante,* p. 390.

[32]*Ibid.*

[33]Kelly v. Owen, *ante,* p. 389.

of the Revised Statutes,[34] results in the naturalization of the woman.[35] And again Mr. Fish[36] said: "The statute of the United States regulating the status of alien women married to American citizens was approved on the 10th of February, 1855 (10 Stat. L. 604). By this statute it is enacted 'that any woman who might lawfully be naturalized under the existing laws, married or who shall be married to a citizen of the United States, shall be deemed and be taken to be a citizen.'

"The Attorney General of the United States in construing this statute has held 'that irrespective of the time or place of marriage, or the residence of the parties, any free white woman, not an alien enemy, married to a citizen of this country, is to be taken and deemed a citizen of the United States.' (Williams, Atty. Gen., 1874, 14 Op. 402, 406.)

"There can, therefore, be no doubt that such person would, upon her marriage to an American citizen, acquire the right to be regarded by the authorities of the United States as an American citizen in every country except that to which she owed allegiance at the time of her marriage.

"It is understood at the Department that the laws of Russia regard a Russian subject marrying a foreign husband as a foreigner. In such case no conflict of law could arise, because the Russian government would concede the full American citizenship of the married woman. But should it be otherwise, her relations to that Government would be affected by another opinion of the Attorney General (Hoar, Atty. Gen., 1869, 13 Op. 128), that while the United States may by law fix or declare the conditions constituting citizens of the country within its own territorial jurisdiction, and may confer the rights of Amer-

[34]Act June 22, 1860, c. 179, s. 31, v. 12, p. 79.

[35]Mr. Fish, Sec. State to Mr. Bancroft, June 17, 1870; Inst. Prussia, XV, 126; Moore's Digest, Vol. III, p. 457.

[36]To Mr. Jewell, June 9, 1874, H. Ex. Doc. 470, 51st Cong. 1 Sess. 24; Moore's Digest, Vol. III, p. 461.

ican citizens everywhere upon persons who are not rightfully subject to the authority of any foreign country or government, it ought not, by undertaking to confer the rights of citizenship upon the subject of a foreign nation, who has not come within our territory to interfere with the just rights of such nation to the government and control of its own subjects."

As Mr. Van Dyne points out in his excellent work on Naturalization,[37] the trend of Departmental decisions seems to be to the effect that, while the force and validity of the Act of 1855 is well recognized, the Department will be slow to extend peculiar privileges or protection claimed on the sole basis of American citizenship to women of foreign extraction who, except for the act of marriage, have taken no steps to transfer their allegiance to the United States, and who by remaining in the country of origin continue to tend the latter an allegiance which, by the mere fact of their continued presence within its territorial limits has never been withdrawn. To quote from the examples selected by Mr. Van Dyne:

"While the general rule is that the wife and minor children share the fortunes of the husband and father, it is necessary that they should in fact partake of his change of domicile and allegiance, and it has been held that the naturalization of an alien in the United States does not require this Government to regard as American citizens those members of his household who have never been within the jurisdiction of the United States but have remained in the land of their original allegiance. (Mr. Rive to Mr. Smith, Dec. 13, 1888; III Moore's Int. Law Digest, 486.)[38]

"This Department prudently refrains from asserting its application to the case of an alien wife continuing within her original allegiance at the time of her husband's naturalization in the United States, inasmuch as the citizen-

[37]pp. 234-240, inc.

[38]Naturalization, p. 236.

ship of the wife might not be effectively asserted as against any converse claim of the sovereignty within which she she has remained. The result would naturally be a conflict of private international law, wherein the state within whose actual jurisdiction the wife remains might be found to have the practical advantage of the argument. (Mr. Foster, Secretary of State, to Mr. Thompson, Minister to Turkey, February 9, 1893, 3 Moore's Int. Law Digest, 486.)" [39]

"Mr. Gresham expressed the opinion that naturalization in the United States has no international effect on the allegiance of the wife and children of the naturalized person while they continue to reside in the country of origin." (Secretary Gresham to Mr. Watrous, January 23, 1905, 3 Moore's Int. Law Digest, 487.)[40]

Secretary Olney is quoted as expressing the view "that the naturalization of a Turkish subject in the United States does not operate to naturalize his wife, who has never been in the United States and who is at the time dwelling in a foreign country."[41]

A comparison of the judicial and administrative views expressed on this point shows that since the passage of the Act of 1855, the courts have, in interpreting that act, unanimously reached the conclusion that the marriage of a woman of foreign extraction to a citizen of the United States makes her *ipso facto* a citizen of this country, irrespective of whether the marriage took place in the United States; and that, with the one exception of the decision in the case of Burton v. Burton, which, in view of the decision of the Supreme Court in Kelly v. Owen can no longer be deemed authoritative, the courts have agreed that the wife becomes an American citizen by the naturalization of the husband subsequent to the marriage. On the other hand the weight of opinion of the succeeding Secre-

[39] Van Dyne, Naturalization, p. 237.
[40] *Ibid.*, p. 237.
[41] *Ibid.*, p. 237.

taries of State is that, for purposes of protection by this country, whether taking the form of the granting of a passport or some more active manifestation of national protection, alien women who have married citizens of this country, but who have themselves never resided here, are not citizens of the United States.

The reasons for this divergence of views is not hard to find. The decisions rendered by the courts were necessarily decided in connection with personal or property rights bearing on persons or things actually within the scope of the courts' jurisdiction; they involved the application of principles of our municipal law to subject matter over which the courts had present and exclusive control. In the cases presented to the Department of State the questions which arose were bound to be decided on principles of national policy and international law. Protection in its varying forms based on the ground of citizenship is denied not because, as far as it goes, the Act of 1855 was held not competent to confer it, but because the law of this country was not the only law to be taken into account in determining whether or not in a given case complete American citizenship existed in an international sense. This idea is expressed in the opinion of Mr. Gresham[42] to the effect that naturalization of the husband in this country has no *international effect* on the allegiance of his wife and children who have never left their country of origin. And it is furthermore emphasized by the fact that the administrative opinions cited by Mr. Van Dyne,[43] all of which, with the exception of Mr. Olney's report to Congress, are contained in Moore's Digest,[44] and there classified under the heading *"Naturalization Internationally Ineffective as to Absent Family;"* while under the classification *"Marriage of Alien Women to Americans— (1) American Law,"* Mr.

[42] *Ante*, p. 396.
[43] *Ante*, pp. 395, 396.
[44] Vol. III, pp. 485-87.

Moore points out in a footnote that citizenship is acquired by marriage under the statute irrespective of residence.[45]

The unwillingness of the Department of State to recognize those women who, although married to citizens of the United States, have themselves remained abroad is not due to the fact of their absence from this country, but to that of their presence in and continued allegiance to another. Nothing is more certain than that it is the part of a sound national policy to refrain from any attempt to assert the existence of the force or validity of the municipal law of one country within the territorial limits of another. To do so would, as has been well said by a former Secretary of State, merely result in "a conflict of private international law, wherein the state within whose actual jurisdiction the wife remains might be found to have the practical advantage of the argument." [46] In this case the passport was in fact issued to a Turkish woman, the wife of a naturalized citizen of the United States who had never resided in this country. Although the Department was of the opinion that the minister in issuing the passport exceeded his instruction, it plainly recognized the distinction between the political status of the woman and that of her minor children who had never been in this country.[47] This, however, is far from saying that the Act of 1855 cannot or does not vest foreign women with the political status of citizenship merely because they do not happen to reside in this country; it only asserts the international principle that the act cannot operate to terminate the allegiance of a foreign born person to his natural sovereign as long as that person, by remaining under the protection of the latter continues to tender that allegiance and the sovereign, by continuing to confer his protection, is in a position to demand it. The most natural conclu-

[45]On page 456.

[46]Mr. Foster, Sec. of State, to Mr. Thompson, Min. to Turkey, Feb. 9, 1893, For. Rel. 1893, p. 598; Moore's Dig., Vol. III, p. 486.

[47]Moore's Dig., III, p. 489.

sion would seem to be that announced by Mr. Fish, already quoted: that a foreign woman marrying an American citizen acquires under the statute the right to be regarded by the authorities of the United States as an American citizen in every country except that to which she owes allegiance at the time of the marriage.

Taken jointly, the result of the judicial and administrative decisions devoted to interpreting the Act of 1855 seems to be this: Whenever the subject matter on which the courts of this country have jurisdiction to pass involves the question of personal or property rights claimed by a woman of foreign extraction who has married a citizen of the United States, or an alien who, after the marriage and at the time the judicial question is presented, has become naturalized according to law, the courts will hold that, in accordance with the provisions of the Act of 1855, the wife has become a citizen of the United States irrespective of whether she has ever resided in this country. When, however, the question is presented administratively and the full enjoyment of the right claimed on the basis of citizenship may conflict with the rights and duties incident to a hitherto permanent allegiance to a foreign sovereign, which the claimant has, by continuing to reside in the foreign jurisdiction, made no effort to avoid, the enjoyment of such rights will be denied, as a matter of national policy based on the international principle of non-interference by outsiders with existing sovereign rights. The weight of judicial opinion to the effect that actual residence in this country is not a prerequisite to the acquisition of citizenship by marriage by a woman of foreign extraction would seem to be supported by the latest expression of Congress on the subject. Section 4 of the Act of March 2, 1907, entitled "An act in reference to the expatriation of citizens and their protection abroad," provided "that a foreign woman who acquires American citizenship by marriage to an American

citizen may if she resides abroad retain her citizenship by registering after the termination of such marital relation." The suggestion that the foreign residence referred to might be taken to mean residence abroad after marriage, or residence in this country, would seem to be avoided by section 2 of the act, which provides that a residence of two years by a naturalized citizen in the country of origin, or of five in any other foreign country, shall result in the loss of United States citizenship in the absence of compliance with certain specified conditions. Again, section 2 provides that American women shall lose their citizenship by the mere fact of marriage to a foreigner, even, it seems, if she continues to reside in this country; and it appears unreasonable to suppose that Congress, in adhering so strictly to the principle of the acquisition of nationality by marriage to an alien residing beyond the limits of his country of origin as to deprive an American woman of her political birthright, did not intend to apply the same principle to the case of an alien-born woman who when abroad marries one who is or later becomes a citizen of the United States. Interpreting section 3, the Circuit Court of Appeals, Second Circuit, 1910,[48] said:

"It is plain that Congress here intends that the wife shall assume the nationality of her husband even to the extent of expatriation in the case of an American woman. Though an American citizen prior to her marriage she cannot resume that relationship while the marriage relationship continues."

In view of the provisions of the Acts of 1855 and 1907, of the result of judicial decisions, and of the further fact that even the departmental decisions above set out refuse recognition of full citizenship to alien women residing abroad married to citizens of the United States only when to grant them full rights as citizens would tend to conflict

[48] 179 Fed. 834.

with the rights and duties incident to an allegiance to a foreign sovereign which they have continued to maintain, it is difficult to find justification for those decisions which hold that merely because such women have not resided in the United States since their marriage they are liable to exclusion as aliens under the immigration law. In such a case the court has before it the Acts of 1855 and 1907, the woman herself is physically within the territorial limits of the jurisdiction where the municipal law of the United States is of exclusive application, and the facts on which the political status of the applicant is based are fully admitted. The question presented is purely judicial in character, and the issue of citizenship when one of law is no longer a subject of administrative determination but is exclusively within the jurisdiction of the courts. Under these conditions it would seem that the courts should be bound by the decisions of MR. JUSTICE FIELD in the case of Kelly v. Owen, and that of MR. JUSTICE HARLAN in the case of United States v. Kellar, and of other courts entitled to the greatest respect, which, as has been seen, hold unanimously that the fact that the marriage takes place beyond the limits of the United States has no effect on the acquisition of citizenship by the wife. And it would seem that, aside from the authority of the decisions above set forth bearing directly on the acquisition of citizenship by non-resident women of foreign extraction, the fact that even since the passage of the Act of 1855 the courts have uniformly recognized the broad principle that an alien woman by marrying an American citizen becomes thereby herself a citizen[49] should not be without its effect. The objections existing

[49]Kane v. McCarthy, 1869, 63 N. C. 299; Kreitz v. Behrensmeyer, 1888, 125 Ill. 141; People v. Newell, 1888, 38 Hun. 78; Halsey v. Beer, 1889, 52 Hun. 366; Gumm v. Hubbard, 1888, 97 Mo. 341; Knickerbocker Life Ins. Co. v Gorbach, 1871, 70 Pa. St. 150; United States v. Kellar, 1882, 13 Fed. 82; Broadis v. Broadis, 1898, 86 Fed. 951; Ware v. Wisner, 1883, 50 Fed. 310; all of which are cited in Letter from Secretary of State, December 20, 1906, Doc. No. 326, 50th Cong., 2d session, pp. 149, 150.

in the administration of a national policy do not exist in the judicial administration of municipal law.

But, viewing the question in a purely administrative aspect, if indeed that were possible, taking into consideration that the administrative decisions based on conclusions of law as opposed to findings of fact are always subject to judicial review—and assuming that under such conditions it might be more natural for the Department of Commerce and Labor to follow administrative rather than judicial precedent, it is enough to say that the decisions of the State Department on the point have established no precedent applicable to the case. The State Department has refused the protection based on the claim of citizenship simply because of the continued existence in the party claiming it of an allegiance with all its attendant rights and obligations to a foreign power, which in return therefor extends a protection coterminous with the allegiance proffered. That there may be no clash between the rights and obligations incident to a double allegiance while the woman remains in her country of origin is the spirit and purpose of the departmental policy. Where, however, the foreign-born wife of an American citizen either accompanies him to the United States, or seeks by herself to enter in order to join him, the very act of throwing off her original allegiance by coming to this country for purposes of residence nullifies the only objection which hitherto existed against the full enjoyment of her rights of American citizenship acquired by virtue of the Acts of 1855 and 1907—in other words, the withdrawal of her allegiance by departure from her country of origin operates *per se* to terminate the rights and obligations hitherto incident thereto, and permits her to exercise her full rights of marriage, which, perhaps, she could not hitherto exercise without violating some duty to her former sovereign. In the eyes of the municipal law of the United States she was vested with a new political status by the

fact of her marriage. In international law she could not exercise rights incident to that status to the exclusion of duties resulting directly from continued residence within the territorial limits of her country of origin. But the original status terminating *per se* with departure coupled with the intent of permanent separation and entrance into the jurisdiction of the United States, all the rights conferred by the status subsequently acquired become capable of enforcement without the risk of violating pre-existing sovereign rights incident to the relationship of protector and protected. The rule laid down by the courts that an alien who has arrived at a port of the United States and whose right to enter has not as yet been passed on by immigration officers is not, for the purpose of invoking the protection of certain guarantees contained in our municipal law, to be deemed within United States jurisdiction, has no application to the case under discussion. The rule is based on the principle that, since a sovereign state is not obliged to accept the allegiance of foreigners, and protection can only be claimed by virtue of an allegiance, either temporary or permanent, such protection cannot be conceded to exist until the proper authorities have determined whether or not the allegiance proffered is such as under the municipal laws of the country is acceptable to the United States. But in the case of the foreign-born woman who marries an American citizen, the acts of Congress providing that she shall be deemed a citizen of this country unequivocally assert that, provided that she may herself be lawfully naturalized, her allegiance is not only acceptable but, in so far as the laws of the United States have any effect, must follow that of her husband.

b. What Women May Be Lawfully Naturalized.

Thus far the right of the wife to enter the country has been considered solely from the point of view of whether or not the Acts of 1855 and 1907 confer upon her a political

status which of itself is sufficient to remove her from the operation of the immigration acts; and in reaching the conclusion that such political status is acquired irrespective of whether she has ever entered or resided in the United States, no other principles than those asserted in the laws on citizenship and naturalization have been applied. When the question for the court to determine has been whether or not a woman of foreign extraction basing her right to enter on American citizenship is subject to the operation of the immigration acts—the fact of the marriage being conceded—the courts have generally taken the view that the applicant's rights are to be determined by the provisions of those acts of Congress which deal with the acquisition of citizenship by aliens; since it is only by virtue of the provisions there contained that a change of political status on the part of the alien can occur. This appears to be the reasonable and natural view to take. Yet the courts in both the Rustigian[50] and the Kaprielian[51] cases unhesitatingly assert that citizenship by marriage cannot be acquired by foreign-born women who at the time of the marriage would, if aliens, be subject to exclusion under the immigration act. In the Rustigian case the court thought it "unreasonable to hold that it was the intention of Congress to confer American citizenship upon an alien who is excluded by the immigration acts from admission to the county;" and, following the *dictum* in the Rustigian case, the court in the Kaprielian case states that "an alien who is of a class of persons excluded by law from admission to the United States does not come within the provisions of section 1994 (the Act of 1855)." And both judges express the view that it was not the intention of Congress by passing the Act of 1855 to annul or override the immigration laws. This is in effect to assume that both sets of laws cover, in part at least, the same subject matter; and further-

[50] *In re* Rustigian, 165 Fed. 980.
[51] *Ex parte* Kaprielian, 188 Fed. 694.

more it appears to be in flat conflict with the interpretation placed on the statutes by the Supreme Court of the United States[52] and by many other courts whose views deserve the greatest consideration, to the effect that citizenship by marriage may be acquired irrespective of the presence of the woman in this country.

Assuming that the courts which have construed the Act of 1855 are correct in holding that it confers citizenship on women of alien extraction irrespective of where the marriage takes place, how, it may be asked, can its provisions operate to annul the provisions of an act the sole purpose of which is to prevent undesirable *aliens* from entering the United States? The fact that the acquisition of citizenship by marriage may result in allowing an undesirable person of foreign extraction to enter and reside in this country cannot be deemed to render ineffective or in any way to interfere with the provisions of an act which is exclusively restricted in its operation to persons other than citizens, and who do not owe allegiance to the United States. To contend that a person excluded from admission does not come within the purview of the Act of 1855 as was stated in the Kaprielian case, is to assume that admission into the United States is a prerequisite to the acquisition of American citizenship, and to support the assumption involves the discrediting of the views endorsed by both the courts and the Attorney General. To contend that unless a woman of foreign extraction is admissible under the immigration law she is incapable of lawful naturalization is to change the words of the state to "admitted and naturalized." Ever since the Supreme Court's decision in the case of Kelly v. Owen,[53] the courts have uniformly held that, notwithstanding the provision in the then existing naturalization laws specially designating the steps to be

[52] *Ante*, p. 389.
[53] *Ante*, p. 389.

taken by foreigners in order to become citizens of the United States (which, of course, involved their residence in this country), citizenship by marriage was acquired by foreign-born women by the mere fact of the marriage itself; and that the specific provisions of the naturalization laws had no application to such cases, and that no further qualifications than that the woman should be a "free white woman" are required. If there is any virtue in the contention that it is unreasonable to suppose that it was the intention of Congress to confer citizenship on an alien excludable under the immigration laws from entering the country, there would seem to be at least equal force in the argument that it was not the intention of Congress to confer citizenship on an alien who had failed to become naturalized in the formal methods provided by an act the sole purpose of which was to enable foreigners to become citizens of the United States; yet, as we have seen, this contention has never received judicial support.

Following to its logical conclusion the doctrine that the Act of 1855 cannot be held to confer citizenship by marriage on alien women who are inadmissible under the immigration act, what is the result? An alien woman suffering with trachoma marries a citizen of the United States in France where the law provides that a French woman marrying a foreigner takes his nationality. Here there can be no conflict of allegiance between the laws governing citizenship in the two countries. If admissibility under the immigration law is to be the test of citizenship, as far as American law is concerned, the woman is not a citizen of the United States, and previous decisions to the effect that the marriage *ipso facto* vests her with citizenship no longer apply. During their return to this country the wife is cured of her disease. Unless it is denied that in the absence of such disability the Statute of 1855 operates to vest the woman with American citizenship, then, when the disability disappears, she becomes an American citizen. The result is to make the acquisition of a political

status depend entirely upon a fortuitous physical condition. If it is suggested that it is unreasonable to attempt to apply the principle to persons outside the jurisdiction of the United States the answer is that in such case the acquisition of political status outside the territorial limits of this country must be exclusively governed by the only law covering the subject, to wit: the Acts of 1855 and 1907. But if this is conceded, citizenship in the wife is conceded, and any disability with which she may be suffering at the time of her admission to this country cannot subject her as a citizen of the United States to the operation of the immigration laws.

If the general doctrine announced in the Rustigian case is to be sustained, it can be only on the assumption that the Act of 1855 does not operate on alien women residing abroad at the time of their marriage. But to attempt to sustain it would be, not only to deny the force of those decisions already cited where the point at issue was the interpretation of the right of applicants for admission to enter the United States, but of later decisions rendered in connection with the power of executive officers to exclude persons of foreign extraction under the immigration laws.

In the case of United States v. Williams,[54] which were *habeas corpus* proceedings on relation of Thakla Nicola and Bertha Gendering, respectively, against the commissioner of immigration at the port of New York, it was held in the case of one of the petitioners, a subject of Turkey, that her marriage with an American citizen made her a citizen of the United States, and that the fact that after the marriage and before she reached the United States with her husband, she contracted some disease which would have excluded her as an alien would not warrant her exclusion; and in the case of the other petitioner, who had married in New York but deserted her husband and

[54] 173 Fed. 626, 1909.

gone to Holland with a paramour, that the naturalization of her husband conferred citizenship on her. The law of Holland is that the woman who marries a foreigner takes his nationality. The court sustained the principle that the marriage of an alien woman in a foreign jurisdiction to an American citizen is within the operation of the Act of 1855, and cites in support of this view Halsey v. Beer, Headman v. Rose, Kane v. McCarthy and Burton v. Burton.[55] The court said: "It is urged that our own act does not cover the case, but that only she may be naturalized who might at the time be admitted as an alien. The words are 'who may herself be lawfully naturalized.' I cannot change the words to 'admitted and naturalized.' Certainly they refer to the classes as defined by the naturalization law. If an alien woman is once admitted and then marries would it be an answer to her claim of citizenship that she had trachoma when she married? If not, then it cannot be the case when she acquires the same right while out of the country." The Government appealed and the Circuit Court of Appeals rendered its decision under the title of *In re Nicola.*[56] The court said: "At the time the relators became citizens by marriage with American citizens they might have been lawfully naturalized. Even if we assume the contention of the district attorney to be correct, that marriage will not make a citizen of a woman who would be excluded under our immigration laws, it does not affect these relators. There is no pretense that when their husbands' nationality was conferred upon them by law they were not healthy physically, mentally and morally. If at that time they gained American citizenship, how did they lose it? What law deprives a citizen of his citizenship because he is so unfortunate as to have contracted a contagious disease? The fact, if it be so that these relators are undesirable citizens, is not germane to the present

[55] *Ante,* pp. 392, 393.
[56] 184 Fed. 322.

controversy. As pointed out by JUDGE HAND (173 Fed. 326), a woman does not lose her citizenship because her health is bad or her moral character open to criticism. Those relators are not citizens of the countries from which they came, as these countries by the mere act of marriage with an American citizen terminate their allegiance. They are American citizens or they are without a country. That they are citizens is affirmed, we think, by the great weight of authority..... Being citizens they cannot be excluded as aliens."

In the case of United States v. Sprung, decided in the Circuit Court of Appeals of the Fourth Circuit,[57] the petitioner in *habeas corpus* proceedings based her claim to a discharge on American citizenship acquired by marriage to a citizen of this country. The majority of the court refused to pass on that question as the executive officers asserted in their return that the marriage had not taken place. JUDGE PRITCHARD, in a dissenting opinion in which he expressed the view that a fair hearing had been denied, and that the marriage had in fact taken place, took up the question of law as to whether or not by virtue thereof the petitioner became a citizen of the United States. The contention of the Department was to the effect that she was an alien leading an immoral life and thus subject to deportation under the Act of 1907. JUDGE PRITCHARD, referring to the case of Leonard v. Grant,[58] said: "In that case it was held that an alien woman becomes by that act a citizen of this country and that such admission to citizenship has the same force and effect as if such woman had been naturalized by the judgment of a competent court. In that case it was held that the language of the act "might herself be lawfully naturalized" does not require that the woman shall have the qualifications of residence, character, etc., as in the case of admission to citizenship in a judicial proceeding, but it is suf-

[57] 187 Fed. 903.

[58] C. C. 5 Fed. 11, 17.

ficient if she is of the class or race of persons who may be naturalized under existing laws."

JUDGE PRITCHARD cites the syllabus of a case passed upon by the Attorney General in response to a letter from the Secretary of Commerce and Labor:[59] "An alien prostitute who entered the United States and was found an inmate of a house of ill-fame and practicing prostitution within three years after landing, having been since lawfully married to a native-born citizen of the United States has to be deemed a citizen and cannot be deported under the immigration laws for her conduct previous to her marriage. The words 'who might herself be lawfully naturalized' in the Act of February 10, 1855 (c. 71, 10 Stat. 604, and section 1994 Revised Statutes), refer to the class or race who might be lawfully naturalized and compliance with the other conditions of the naturalization laws is not required. The immigration laws have not added to the classes of persons incapable in their own right of naturalization."

c. When the Purpose of the Marriage is to Avoid Deportation.

In addition to holding that marriage with an American citizen left the political status of the applicant for admission still unchanged and consequently subject to the operation of the immigration act, JUDGE DODGE in the Kaprielian case seems to have relied on another reason for denying the writ of *habeas corpus*. He states: "The marriage alleged in the petition took place, if at all, after the order for the woman's deportation was made, pending its

[59]XXVII, Op. Atty. Gen., p. 507, July, 1909; but in a subsequent opinion rendered in response to a later communication from the Secretary of Commerce and Labor wherein it appeared that the marriage in question was colorable the Attorney General asserted the right of the departmental authorities to deport the woman—not because the so-called marriage was entered into with a view to avoid deportation—but because a formal marriage used as a blind cannot effect the change in political status from alienage to American citizenship. XXVII, Op. Atty. Gen. 578, August, 1909.

execution, and while the commissioner held security for her surrender to him in order that it might be executed. ..... A marriage entered into under circumstances such as are here disclosed could hardly have been free from intent thereby to avoid deportation whether otherwise in good faith or not."

Provided that the marriage actually took place, it is hard to perceive how the fact that deportation might have been avoided thereby is in any way material. It would seem that, according to the authorities cited, the marriage could not have taken place without bringing about that precise result. Its performance brought about a change in the political status of the petitioner which should then and there have exempted her from the operation of the immigration law. And a Circuit Court of Appeals has so held in a decision rendered on an identical state of facts.[60] There the petitioner, a woman of French extraction, was held for deportation by the immigration officers portporting to act under the authority of the Act of 1903. Pending the application for her release under a writ of *habeas corpus,* she married a naturalized American citizen. The court said: "The rule is well settled that her marriage to a naturalized citizen of the United States enable her to be discharged. The status of the wife follows that of the husband (Rev. Stat., sec. 1994, U. S. Comp. St. 1901, p. 1268; Leonard v. Grant, C. C. 5 Fed. 11; Kelly v. Owen, 7 Wall. 496, 19 Law Ed. 283; United States v. Kellar, C. C., 13 Fed. 82; Ware v. Wisner, C. C., 50 Fed. 310; Broadis v. Broadis, C. C., 86 Fed. 951), and by virtue of her marriage her husband's domicile becomes her domicile."[61]

[60]Hopkins v. Fachant, 130 Fed. 839.

[61](N. B.—If the immigration authorities had not found that an actual marriage had taken place, no legal question would have been raised, and the court could not have had occasion to pass on the question presented in the traverse to the return. See *Ex parte* Avakian, 188 Fed. 686, 693.) "It is manifest that the mere intention on the part of the parties to remove the woman from the operation of the immigration laws would not in itself

(2.) By Birth in the United States.

One who is born a citizen of the United States occupies no status under the immigration law; with reference to that law his political standing is such, if not surrendered, as to place him completely beyond the sphere of operation of the principles of any law applicable exclusively to aliens. This is, of course, the case with all citizens of the United States, whether their citizenship is the result of birth or naturalization.

The fact of the citizenship of any person seeking admission to the United States may always be inquired into by the immigration authorities, and is one on which, when a pure question of fact, their decision is final and binding on the courts.[62] The facts on which the claim is based being conceded, the administrative finding as to what legal or political effect these acts may have may always be inquired into by the courts. As has been seen, the weight of judicial authority is to the effect that the question of admissibility of the applicant depends purely on whether under the laws governing citizenship and naturalization, considered apart from the immigration act, the political status claimed exists; while isolated decisions have maintained that whether or not citizenship has been acquired by naturalization depends on whether the facts on which the claim of citizenship is based meet the

be sufficient to invalidate what was otherwise a lawful marriage, and the real inquiry is whether lack of intention on the part of the contracting parties to assume the rights and duties incident to the marriage relation would invalidate the marriage." (XXVII, Op. Atty. Gen., p. 578, August, 1909.) With regard to the effect of the marriage of a foreign woman who has been expelled from France to a citizen of that country for the sole purpose of acquiring thereby the right to enter and remain in France, M. Martini says: "This gives no occasion for the application of the principle '*Fraus omnia corrumpit.*' The public order will suffer less thereby than by seeing a national, irrespective of the purposes of his conversion, treated as if his status were that of an alien." (Martini, l'Expulsion des Etrangers, p. 201.)

[62]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917.

conditions expressed in both the laws dealing with the acquisition of citizenship, and the admission and exclusion of aliens.

(a.) The Wong Kim Ark Decision.

It is apparent that the fact of birth within the territorial limits and jurisdiction of this country being conceded by the immigration officers, citizenship must follow as a matter of course, and that children thus born, even though of alien parents themselves incapable of naturalization under our laws[63] are not subject to exclusion or deportation under the immigration or Chinese exclusion acts.[64] Since the opinion rendered in the great case of Wong Kim Ark[65] this general principle decided therein has never been questioned by the courts.

The facts in the case, in the words of MR. JUSTICE GRAY, presented the following question: "Whether a child born in the United States of parents of Chinese descent who at the time of his birth are subjects of the Emperor of China, but has a permanent domicile and residence in the United States and are there carrying on business and are not employed in any diplomatic or official capacity under the Emperor of China becomes at the time of his birth a citizen of the United States by virtue of the first clause of the fourteenth amendment of the Constitution: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

[63] Wong Kim Ark v. United States, 169 U. S. 649, 42 Law Ed. 890.

[64] Wong Kim Ark, *supra;* United States v. Sibray, 178 Fed. 150; Lee Sing Far v. United States, 94 Fed. 836; *In re Giovanna,* 93 Fed. 660; *In re* Wong Kim Ark, 71 Fed. 382; Gee Fook Sing v. United States, 49 Fed. 146; *In re* Wy Shing, 36 Fed. 553; *In re* Yung Sing Hee, 36 Fed. 437; *Ex parte* Chin King, 35 Fed. 354; *In re* Look Tin Sing, 21 Fed. 905; Gee Fook Sing v. United States, 7 U. S. App. 27; *In re* Yung Sing Hee, 13 Sawyer 482; *Ex parte* Chin King, 13 Sawyer 777; State v. Ah Chew, 16 Nev. 50.

[65] *Supra.*

they reside." The question was, as we have seen, decided in the affirmative over the dissent of CHIEF JUSTICE FULLER and MR. JUSTICE HARLAN.

Since the rendition of that judgment cases involving the birth of aliens in this country have come up for administrative determination where the facts involved were possibly such as the Supreme Court may not have had in view while discussing the great principles of the common and constitutional law adverted to in the course of that decision. These cases involve the following point of law: What is the political status of a child born of an alien mother while the latter, after having been excluded by the immigration authorities from entering the United States, is detained for deportation in execution of the excluding decision? The vital question is whether a child is under these conditions born in the United States and subject to the jurisdiction thereof. This question involves, it would seem, a new consideration of the words of the fourteenth amendment to the Constitution, and in proceeding to this analysis we can do no better than to attempt to follow the path hewn out by that great judge who rendered the decision in the case of Wong Kim Ark.

After pointing out that the constitution nowhere defines the words "citizens of the United States" except by the affirmative declaration contained in the fourteenth amendment that "all persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States" the court states that in this as in other respects the Constitution "must be interpreted in the light of the common law the principles and history of which were familiarly known to the framers of the Constitution." ..... "The fundamental principle of the common law with regard to English nationality was birth within the allegiance, also called 'ligealty,' 'obedience,' 'faith' or 'power' of the King. The principle embraced all persons born within the King's allegiance and subject to his protection. Such allegiance and protection were

neutral.....and were not restricted to natural-born subjects and naturalized citizens or to those who had taken an oath of allegiance; but were predicable of aliens in amity, so long as they were within the Kingdom." The children of ambassadors, however, were excepted, not being born within the allegiance of the King but, on the contrary, within that of the sovereign whose person is represented by the parent. This, says the court, is a "fundamental principle," and then points out that the English law of the past three centuries and of to-day is that aliens residing in the dominions possessed by the Crown of England were within the allegiance, the obedience, the faith or loyalty, the protection, the power, the jurisdiction of the English sovereign; and, therefore, every child born in England of alien parents was a natural-born subject, unless the child of an ambassador or other diplomatic agent of a foreign state, or of an alien enemy in hostile occupation of the place where the child was born. The same rule was in force in all of the English colonies upon this continent down to the time of the Declaration of Independence, and in the United States afterwards, and continued to prevail under the constitution as originally established. MR. JUSTICE STORY is cited to the effect that "allegiance by birth is that which arises from being born within the dominions and under the protection of a particular sovereign. Two things usually concur to create citizenship: first, birth locally within the dominions of the sovereign; and, secondly, birth within the protection and obedience or in other words, within the ligeance of the sovereign. That is the party must be born within a place where the sovereign is at the time within the full possession and exercise of his power, and the party must also at his birth derive protection from, and consequently owe obedience or allegiance to, the sovereign as such, *de facto*." The court cites 28 U. S., 3 Peters 164:[67]

[67] 7 Law Ed. 640.

"Nothing is better settled at the common law than the doctrine that the children even of aliens born in a country while the parents are resident there under the protection of the government and owing a temporary allegiance thereto, are subjects by birth." MR. JUSTICE STORY is again quoted as saying that "in respect to residents in different countries or sovereignties" there are certain principles which have been generally recognized by tribunals administering public law (adding, in later editions, "and the law of nations") as of unquestionable authority, and stated, as the first of those principles, "that persons who are born in a country are generally deemed to be citizens and subjects of that country." [68]

Many additional authorities in support of the above principle are quoted or cited by the court. Adverting to the contention of counsel that the true rule of international law was the *jus sanguinis,* rather than the *jus soli,* the court observes that "there is little ground for the theory that at the time of the adoption of the fourteenth amendment of the Constitution of the United States there was any settled and definite rule of international law generally recognized by civilized nations, inconsistent with the ancient rule of citizenship by birth within the dominion. Nor can it be doubted," the court adds, "that it is the inherent right of every independent nation to determine for itself, and according to its own constitution and laws, what classes of persons shall be entitled to its citizenship;" and, after reviewing the laws passed by this country dealing with the acquisition of citizenship by foreigners, that "there is nothing to countenance the theory that a general rule of citizenship by blood or descent has displaced in this country the fundamental rule of citizenship by birth within its sovereignty."

The main purpose of the words "all persons born or naturalized in the United States, and subject to the juris-

[68] Story, Conflict of Laws, Par. 28.

diction thereof, are citizens of the United States and of the state wherein they reside" in the first section of the fourteenth amendent "doubtless was, as has been often recognized by this court, to establish the citizenship of free negroes which had been denied in the opinion delivered by CHIEF JUSTICE TANEY, in Dred Scott v. Sanford,[69] and to put it beyond doubt that all blacks as well as whites, born or naturalized within the jurisdiction of the United States are citizens of the United States. But the opening words 'All persons born' are general, not to say universal, restricted only by place and jurisdiction, and not by color and race....." The court calls attention to the words of MR. JUSTICE SWAYNE in the dissenting opinion in The Slaughter House cases:[70] "by 'any person' was meant all persons within the jurisdiction of the state."

Considerable attention was given to explaining the meaning of the term "and subject to the jurisdiction thereof." The court cites with approval the dissenting opinion in the case of Elk v. Wilkins,[71] in which reference was made to the Civil Rights Act of 1866, which was succeeded by the fourteenth amendment, "declaratory in form, and enabling and extending in effect."[72] That dissent proceeds: "Beyond question, by that act national citizenship was conferred directly upon all persons in this country, of whatever race (excluding only Indians not taxed), who were born within the territorial limits of the United States, and were not subject to any foreign power."[73] "The real object of the fourteenth amendment of the Constitution," the court proceeds, "in qualifying the words 'all persons born in the United States' by the addition 'and subject to the jurisdiction thereof' would

[69]60 U. S., 19 How. 393, 15 Law Ed. 391.
[70]83 U. S., 16 Wall. 128, 129, 21 Law Ed. 425, 426.
[71]112 U. S. 94, 28 Law Ed. 643.
[72]Wong Kim Ark, p. 676.
[73]pp. 681, 682.

appear to have been to exclude by the fewest and fittest words (besides children of members of the Indian tribes standing in a peculiar relation to the National Government, unknown to the common law) the two classes of cases—children born of alien enemies in hostile occupation, and children of diplomatic representatives of a foreign state—both of which, as has already been shown by the law of England, and by our own law from the time of the first settlement of the English colonies in America, had been recognized exceptions to the fundamental rule of citizenship by birth within the country." "It is impossible to construe the words 'subject to the jurisdiction thereof' in the opening sentence as less comprehensive than the words 'within its jurisdiction' in the concluding sentence of the same section, or to hold that persons 'within the jurisdiction' of one of the states of the Union are not 'subject to the jurisdiction of the United States.'" [74] The result of the authorities cited leads the court, in its own words, "irresistibly" to the conclusion that "the fourteenth amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens" with the exceptions already mentioned. And the words of Mr. Webster, when Secretary of State, in his report to the President on Thrasher's case, in 1851, since repeated by the Supreme Court, are cited in the course of the conclusion: "It can hardly be denied that an alien is completely subject to the political jurisdiction of the country in which he resides—seeing that" (and now come Mr. Webster's words) "independently of a residence with an intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing of any former allegiance, it is well known that by the public law an alien, or a stranger born, for so long a time as he continues within

[74] p. 687.

the dominions of a foreign government, owes obedience to the laws of that government, and may be punished for treason, or other crimes, as a native born subject might be." Finally, after stating that the fourteenth amendment contemplates two sources of citizenship only, birth and naturalization, the court observes: "Citizenship by naturalization can only be acquired by naturalization under the authority and in the forms of law. But citizenship by birth is established by the mere fact of birth under the circumstances defined in the Constitution. Every person born in the United States, and subject to the jurisdiction thereof, becomes at once a citizen of the United States and needs no naturalization." [75]

In Van Dyne on Citizenship, p. 24, the learned author, after citing a number of decisions both judicial and administrative to the effect that citizenship is acquired by birth in this country, closes with an analysis of the Wong Kim Ark case at the end of which he states: "The foregoing establishes, beyond controversy, that, by our law, children born to foreigners in the United States are citizens of the United States."

But can it be said that the great principles enunciated in the Wong Kim Ark decision apply to the peculiar situation under consideration? This would seem to depend wholly on whether or not the child born of an alien woman held in detention for deportation is born, to use the words of MR. JUSTICE GRAY, "under the circumstances defined in the Constitution," and these circumstances are defined to be "in the United States and subject to the jurisdiction thereof." And such a person is declared by the fourteenth amendment to be a citizen of the United States and of the state wherein he resides.

Before proceeding to a consideration of whether or not the child is born "in the United States and subject to the jurisdiction thereof" it may be well to consider the signifi-

[75] p. 702.

cance of the additional phrase "citizens of the United States and of the state wherein they reside." Does this phrase mean that the citizenship granted must include in citizenship in the United States citizenship in a state? and, if so, is residence necessary?

In other words in order to acquire United States citizenship under this section is it necessary that birth shall have taken place in one of the states of the Union? With respect to the significance of the word "reside," as used in this connection, it is apparent that, if it applies at all to the case of citizenship acquired by birth, it can, in the nature of things, apply only to the parents of the child; but the Constitution does not say so, and such a construction would be at plain variance with the obvious purpose of the amendment to bring about the existence of the political status by the mere fact of birth. The word "reside" is plainly used in connection with the acquisition of citizenship in the state in which the birth occurs. The purpose of this language is explained by MR. JUSTICE MILLER in The Slaughter House Cases,[76] where, in treating of this clause of the fourteenth amendment, he says: "The distinction between citizenship of the United States and citizenship of a state is clearly recognized and established. Not only may a man be a citizen of the United States without being a citizen of a state, but an important element is necessary to convert the former into the latter. He must reside within the state to make him a citizen of it, but it is only necessary that he should be born or naturalized in the United States to be a citizen of the Union."[77] The effect of the phrase would seem to be no more than to provide that birth in the United States under the circumstances set out in the fourteenth amendment, besides making the person so born a citizen of the United States, confers upon him citizenship in any state of the Union, provided he takes up his residence in that state.

[76] *Ante*, p. 417.

[77] Slaughter House Cases, 83 U. S., 16 Wall. 73, 74, 21 Law Ed. 408.

(b.) Children of Aliens Born

a. While in Detention Prior to Admission.

That a child born in detention pending the deportation of the alien mother is born in the United States cannot be denied. That both mother and child are subject to the jurisdiction of immigration officers and to criminal and civil process; that they can claim police protection, the protection of the constitutional guarantee that they shall not be deprived of life, liberty, or property without due process of law, and are, hence, in a limited sense subject to the jurisdiction of the United States, is equally incontrovertible. The question can, perhaps, be advantageously examined by considering the cases of the mother and child separately.

The mother, an alien, seeks admission into the United States, and, because of disabilities which exclude her from admission under the immigration laws is refused entry and held for deportation. The situation presented is an offer of allegiance by an alien and its rejection by the United States Government, the sovereign to whom the offer is made. The fact that pending the execution of the order of deportation the woman is, from motives purely of humanity, afforded hospital treatment under the temporary protection of the United States in no way constitutes an indication that the allegiance offered is or will be accepted, and is not to be construed as a mark of that protection offered by a sovereign state to those resident, even temporarily, within its dominions. That the woman is not under these conditions even a resident of this country, is clear.[78] In this case no question of citizenship arises; the only issue involved is her right to enter the United States, and this, because she is an alien, is determined exclusively by the provisions of the immigration law.

[78]Zartarian v. Billings, 204 U. S 170. 51 Law Ed. 428; United States v. Rodgers, 182 Fed. 274.

A very different question is presented by the case of the child. Never having existed beyond the territorial limits of the United States, before coming within what, for the present, we may designate as the limited jurisdiction of the United States, no question of its alienage, in the sense of allegiance to any foreign power, can arise. Consequently it can scarcely be said that with reference to the child the offer of allegiance and subsequent refusal on the part of the Government which occurred in the mother's case has taken place, or that its situation in detention is "as if it had never been removed from the vessel." If the child is to be considered an alien, then, to be sure, the mere fact of its presence on shore can vest it with no right to enter which it would not have had, if its birth had taken place on the vessel. On the other hand, the fact that the mother is debarred as an alien from entering this country could not, it would seem, be a bar to the acquisition of citizenship by the child provided that the latter could be under such circumstances deemed to be born subject to the jurisdiction of the United States as the words are used in the Constitution. If the child is subject to deportation it can only be on the ground that it is an alien; and to be found to be an alien it must be found not to have been born in and subject to the jurisdiction of the United States; and if found to have been born not subject to the jurisdiction of the United States this conclusion must be based on some theory other than that the child was at any time physically subject to the jurisdiction of some other power.

At first glance a comparatively simple solution of the question presents itself with inviting insistence. It is easy to suggest that since the allegiance of the mother has never been accepted her situation is as if she had never entered the territorial limits of the United States, and the child's political status is what it would have been had the birth occurred at sea or elsewhere outside the jurisdiction of this country. But we are at once confronted with the

principle so forcibly expounded and so often reiterated in the Wong Kim Ark case that under the common law, international law, and the fourteenth amendment of the Constitution the *place where* the birth actually took place is one of the two great factors on which American citizenship depends. It is impossible to overlook it or to attempt to supplant it by dint of legal fiction. The solution of the question would seem to turn on the meaning to be attributed to the words "subject to the jurisdiction."

Its purpose was stated in the Wong Kim Ark case to be to exclude in the fewest and fittest words possible the children of members of Indian tribes, the children of aliens in hostile occupation, and of diplomatic representatives of a foreign state—recognized exceptions to the "fundamental rule of citizenship by birth within the country." This fundamental rule was then designated as "birth within the allegiance also called 'ligealty,' 'obedience,' 'faith,' or 'power' of the King, and embraced, it is said, all persons born within the King's allegiance and subject to his protection. Allegiance, obedience, faith, loyalty, protection, power, and jurisdiction are classed together apparently as synonymous terms. "Every citizen or subject of another country, while domiciled here, is within the allegiance and the protection, and *consequently subject to the jurisdiction* of the United States." It is of interest to note the frequency with which the terms "residence" and "domicile" are used in connection with "allegiance" and "subject to the jurisdiction." JUSTICE HARLAN is quoted as saying in the dissenting opinion in Elk v. Wilkins,[79] that an Indian "having severed himself from his tribe and become a *bona fide resident* of a state and thereby become subject to the jurisdiction of the United States, within the meaning of the fourteenth amendment" and again: "The amendment in clear words and manifest intent includes the children born

[79] 112 U. S. 94, 28 Law Ed. 643.

within the territory of the United States of all.....persons.....*domiciled* within the United States" "Chinese persons are entitled to the protection of and owe allegiance to the United States so *long as they are permitted by the United States to reside* here; and are 'subject to the jurisdiction thereof' in the same sense as all other aliens *residing* in the United States."

Finally, in the last paragraph of the opinion the court draws attention to the fact that the parents of the petitioner had at the time of his birth *a permanent domicile and residence* in the United States and were carrying on business there.[79a]

From the language and reasoning in the Wong Kim Ark decision it is difficult to dissociate the words "subject to the jurisdiction" from the idea of unqualified subjection to the national protection. As before stated, an alien woman held for deportation is in no sense a resident of this country, and the Supreme Court, not once but several times, uses language which indicates strongly that residence, no matter how transitory or how brief must exist in order to give rise to allegiance. "Allegiance and protection," said CHIEF JUSTICE WAITE, in the case of Minor v. Happersett,[80] "are reciprocal obligations. The one is a compensation for the other; allegiance for protection, and protection for allegiance." By refusing the alien's offer of allegiance the United States indicates not only its unwillingness to extend its protection but actually refuses to do so. To refuse its protection is to refuse to the extent that the dictates of national justice will allow, the benefits of the machinery by which protection is afforded; in a word, the full complement of the laws which, when enforced, constitute the physical manifestations of the "jurisdiction" of the state. In the case of the child, as in that of the mother, presence under detention does not constitute residence; and, therefore, its relations

[79a] Italics in last three paragraphs ours.

[80] 88 U. S., 21 Wall. 162, 22 Law Ed. 627.

to the United States do not partake of the nature of allegiance, and consequently fall short in laying the foundation for the existence of that protection without which the child could not, it would seem, be correctly said to be "subject to the jurisdiction of the United States."

The above must not be taken as intending to convey the idea that allegiance cannot exist without residence. A sovereign state has the right to designate who shall become its citizens, and under what circumstances the privilege of citizenship shall be bestowed. We have already seen that, under the Act of 1855, a foreign woman can by marriage enter into a condition of allegiance to the United States even though she has never entered the country. "The acquisition," says Mr. Dicey,[81] "of nationality by descent is foreign to the principles of the common law, and is based wholly upon statutory enactments."

It is only where allegiance is predicated of an individual within the territorial limits of a foreign sovereign state that residence appears to be necessary. This is the temporary allegiance owed by strangers sojourning in a foreign state in return for the protection which they enjoy by the mere fact of having placed themselves under the sovereign's jurisdiction. And it is thought that this protection must exist even though the presence of the alien within the territory of a state involves a breach of the municipal law of that country at the time of entry.

b. Of Aliens Unlawfully Residing in the United States.

This point may be considered in connection with the following state of facts: Two aliens, man and wife, both excludable under the immigration laws, succeed in evading the watchfulness of the immigration officials, and in taking up their abode in the United States After living here for a year a son is born to them. Their unlawful presence becomes known to the immigration officers, and

[81] Conf. Laws, p. 741.

together with their child they are arrested on a warrant of the Secretary of Commerce and Labor ordering their deportation. The facts are admitted. Does the immigration law apply to the son born in this country? Or, in other words, is the child under these conditions born in, and subject to the jurisdiction of the United States? It is admitted that at the time of the arrest the parents had come to this country with the intention of making it their home, and actually established their home here in pursuance of their original design. In the words of MR. JUSTICE GRAY, every subject of a foreign country while domiciled here is *within the allegiance and protection, and consequently subject to the jurisdiction* of the United States. Does the fact that the parents belong to a class of aliens whose allegiance the United States does not desire and whose entrance into the United States is forbidden by law affect the political status of the child? Obviously not, unless the bare legal prohibition suffices to prevent the parents from acquiring a residence or domicile—it is immaterial which—in this country. True, the parents never acquired a municipal status by virtue of or under the immigration law; and they never acquired a lawful domicile in the sense that they were never entitled to enter for the purpose of establishing a home. But the fact remains that they entered this country and proceeded to reside here, until their arrest, in enjoyment of every benefit which the law of the United States confers on persons lawfully resident here, and under the same duty to carry out their correlative obligations. Their temporary allegiance to the United States was complete and gave rise to reciprocal protection on the part of the state, unaffected by the fact that in order to enjoy and exercise the rights and duties incident thereto they had violated the immigration law.

This does not mean that an alien may continue in a position of allegiance to the sovereign against that sovereign's will. The state may prevent the existence of the

condition, by making it impossible for the alien to acquire a residence within its territorial limits, or, if the condition exists may withdraw its protection by expelling the foreigner. But as certain as is the fact that any such alien resides within the limits of a given sovereign state, just so certain is it that the mutual relation of allegiance and protection exists. To deny this would be to deny the fact of sovereignty itself, and the existence of a sovereign right, which, like the inherent right of an independent member of the family of nations to expel or exclude aliens, cannot, in the words of MR. JUSTICE FIELD, "be granted away or restrained on behalf of any one." The case under discussion would seem to differ from that of the child is born in detention in this: that the latter at the time of his birth is not residing nor is his mother residing in the United States, and, therefore, he is not born in allegiance to or subject to the jurisdiction thereof; while the child born of alien parents who, though under the immigration law they have no right to do so and are subject at any time to deportation thereunder, are nevertheless residing in the United States and owe temporary allegiance thereto, is necessarily born in allegiance to, and, therefore, is a citizen of this country.

III. The Status of Domiciled Aliens.

A. IN GENERAL.

The question whether the acquisition by aliens of a domicile in this country affects as to them the operation of the provisions in the immigration laws dealing with the exclusion or expulsion of foreigners is one which, ever since the decision in the case of Taylor v. United States,[82] rendered on January 16, 1907, has given rise to numerous and conflicting decisions by those courts which have had occasion to render opinions thereon. The issue is most often presented in connection with the claim of the right to enter made by an alien who, after having established

[82] 152 Fed. 1.

his domicile here, leaves the United States, *animo revertendi,* and on his return is refused admission by the immigration authorities because found at the time to be suffering with some disability which, were he attempting to enter for the first time in the capacity of a foreign immigrant seeking to make this country his home, would be cause for his exclusion under the immigration act. The basis of the claim is, not that the applicant is not an alien, or that he is not suffering with the defect found by the officials to exist, for these are findings of fact into which the courts have not the right to inquire, but that, having already established his home here, he is not an immigrant, and that consequently the immigration acts have no application to his case.

The soundness of this contention had up to the rendering of the decision in the Taylor case,[83] been continually sustained by the courts; and, in that case, the precise point of the right of the domiciled alien to return unimpeded by the restrictions of the immigrant Act of 1903 was not presented for judicial determination. The question at issue was whether, under the appropriate sections of the Act of March 3, 1903, the captain of a vessel was, while in an American port, responsible for the desertion and escape to American soil of an alien member of his crew. It was contended that an alien seaman was not an immigrant, and that the act only penalized negligence on the part of the captain in permitting alien immigrants to land without inspection by the immigration authorities; but the court held that since the act designated the persons whose landing was not to be permitted by the person in control of the vessel as "aliens," whereas, in the preceding acts, they had been designated as "alien immigrants," the provision must necessarily apply to all aliens, whether immigrants or not. This decision was later reversed by the Supreme Court of the United States.[84]

[83] *Supra.*

[84] Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

The distinction between alien immigrants and other classes of foreigners coming to or present in the United States had always been recognized by the courts and the Department of Justice, and the fact that the former occupied a different position from the latter under earlier acts had been as freely conceded.[85] Immigration was defined as the act of coming to a country with the intention of residing there,[86] and it had been held that an alien who had by mistake been carried from a foreign port, and while at a port of the United States merely as one of the points of the round trip home, was not in this country as an immigrant, and, therefore, not within the operation of the Act of March 3, 1891.[87]

As stated by the court in the case of United States v. Nakashima,[88] "the Act of 1891 had uniformly been held to apply solely to alien immigrants, and not to affect the rights of resident aliens." The fact that the judge who rendered the opinions in two of the cases most frequently cited to this effect was the first to enunciate the new doctrine which arose with the enactment of the Act of March 3, 1903, namely, that the substitution of the word "aliens" in that act for "alien immigrants" in certain sections of prior acts included in its operation all aliens,[89] gives his decisions under the prior acts a peculiar interest. In Martorelli's case,[90] he said, in construing the Act of 1891 and those preceding it: "These acts refer to aliens who are imported into or who immigrate to this country, not to persons already here, who temporarily depart and return;" and *In re* Maiola:[91] "The entire body of statute law

[85] *In re* Panzara *et al.*, 51 Fed. 275; *In re* Martorelli, 63 Fed. 437; and see United States v. Goldenberg, 168 U. S. 95, 42 Law Ed. 394, 22 Op. Atty. Gen. 353, Feb., 1899, 23 Op. Atty. Gen. 278, Oct. 1900.

[86] United States v. Burke, 99 Fed. 895.

[87] Moffitt v. United States, 128 Fed. 375; and see 23 Op. Atty. Gen. 278, October, 1900.

[88] 160 Feb. 843.

[89] Taylor v. United States, 152 Fed. 1; *Ex parte* Hoffman, 179 Fed. 839.

[90] 63 Fed. 427.

[91] 67 Fed. 114.

touching the exclusion of contract laborers conclusively shows that it is directed exclusively against alien immigrants, not against alien residents when returning after a temporary absence." [92]

The position in international law of the alien domiciled in this country had already been defined by the Supreme Court of the United States in the case of Lau Ow Bew v. United States.[93] This was the case of a Chinese merchant domiciled in this country who, after a departure, *animo revertendi,* failed on his return to produce the certificate of identity required under the Chinese exclusion Act of 1882 of Chinese merchants about to come to the United States. The facts of his identity and commercial domicile were admitted, but he was denied admission solely because he was without a certificate. The court said: "But Chinese merchants domiciled in the United States and in China only for temporary purposes, *animo revertendi,* do not appear to us to occupy the predicament of persons 'who shall be about to come to the United States' when they start on their return to the country of their residence and business. The general terms used should be limited to those persons to whom Congress manifestly intended to apply them..... By general international law, foreigners who have become domiciled in a country other than their own, acquire rights and must discharge duties in many respects the same as possessed by and imposed upon the citizens of that country, and no restriction upon the footing upon which such persons stand by reason of their domicile of choice, or commercial domicile is to be presumed....."

This is a recognition of the well-known principle of international law, that, once a sovereign state has made apparent its willingness to receive foreigners into its dominion, and they avail themselves of the opportunity thus offered, they have the same right to the protection of the

[92] And see *In re* Ota, 96 Fed. 487; *In re* Panzara, 51 Fed. 275.

[93] 144 U. S. 47, 36 Law Ed. 340.

municipal law of the country as the residents themselves; in other words, that, just as the citizen may avail himself of every right conferred by the law of the state upon citizens thereof, so may the alien claim every advantage which the municipal law confers upon aliens. And, while it is within the power of every sovereign state to designate under what conditions aliens may take up their abode within its territorial limits, the conditions or restrictions, if imposed, must be openly expressed and declared, in order that the foreigner may not be put in the position of having been deceived with regard to the rights which he had hoped to exercise on being admitted. It is plain that it would be opposed to this rule of the law of nations just referred to, as well as the principles of enlightened government, to read into a law dealing with the rights and obligations of aliens, conditions or restrictions not expressly declared or not existing by necessary implication.

Once, however, that the law-making power of the country of domicile finds it necessary to impose additional conditions relative to the rights of aliens coming to, or even resident in, the county, and sees fit to express restrictions in the form of municipal laws or regulations governing the subject, such conditions are of binding effect on all aliens upon whom they are intended to operate, and the fact that a foreigner has established and maintained for years a domicile in the country is no ground on which his exemption from the effects of this principle of law can be based.

This is made clear by the decision of the Supreme Court in the case of Lem Moon Sing v. United States.[94] In 1895 a Chinese person alleging himself to be a merchant domiciled in the United States, presented himself at the port of San Francisco for admission. The collector of the port refused to admit him and held him for deportation, whereupon he applied for a writ of *habeas corpus* on the ground

[94] 158 U. S. 538, 39 Law Ed. 1082.

that he was domiciled and engaged in business in the United States. The Act of 1894 had provided that the decision of executive officers should in all cases be final as to the right of aliens seeking admission into this country under any law or treaty. It was insisted by counsel that the right of domicile acquired by aliens lawfully in this country could not legally be taken away, nor could its exercise be obstructed by any action of executive officers of the Government under whatever authority they proceeded. In affirming the judgment of the district court which denied the writ, the court speaking through MR. JUSTICE HARLAN, said: "The power of Congress to exclude aliens altogether from the United States or to prescribe the terms and conditions upon which they may come to this country,.....is settled..... Is a statute passed in execution of that power any less applicable to an alien who has acquired a commercial domicile within the United States, but who, having voluntarily left the country, although for a temporary purpose, claims the right under some law or treaty to re-enter it? We think not. The words of the statute are broad and include 'every case' of an *alien,* at least every Chinese alien, who at the time of its passage is out of the country, no matter for what purpose, and seeks to come back. He is none the less an alien because of his having a commercial domicile in this country..... He cannot by reason merely of his domicile in the United States for purposes of business demand that his claim to re-enter by virtue of some statute or treaty, shall be determined.....by the courts of the United States..... He left the country subject to the exercise by Congress of every power it possessed under the Constitution."

The distinction between the Lem Moon Sing and Lau Ow Bew case is pointed out by the court in the following language: "The difference between that case and the present one is that, by the statutes in force when the former was decided, the action of executive officers charged with the

duty of enforcing the Chinese Exclusion Act of 1882, as amended in 1884, could be reached and controlled by the courts when necessary for the protection of rights given or secured by some statute or treaty relating to Chinese. But, by the Act of 1894, the decision of the appropriate immigration or customs officers excluding an alien 'from admission into the United States under any law or treaty' is made final in every case, unless on appeal to the Secretary of the Treasury, it be reversed."

There is nothing in the language of the decision to indicate that, had Congress left the courts the power to pass on the point as to whether or not a Chinese alien domiciled here was seeking to exercise a right to enter this country guaranteed by the treaty with China of 1880, the same result would not have been reached as in the decision in the Lau Ow Bew case; and nothing to show that, in the absence of municipal legislation to the contrary, an alien who legally acquires a domicile in this country has under international law the right to maintain it, whether such maintenance consist in the uninterrupted exercise of domiciliary rights, or the resumption of the exercise thereof after a temporary absence *animo revertendi.* It goes no further than to lay down the principle that, once the municipal law has provided that the right of *all aliens seeking to enter the country under any law or treaty*—including by necessary implication those already domiciled here—shall be determined by the proper administrative officers, the courts are powerless to interfere on behalf of persons excluded thereunder on the ground that they have acquired a domicile in this country.

In endeavoring to determine the rights of resident aliens with reference to the Act of 1907, the question is not whether Congress has the power to impose conditions under which they may retain a domicile already established, but whether Congress has in fact exercised this power. The decision in the Lau Ow Bew case makes it clear that any restriction of the right of the alien dwelling in the

United States to retain his domicile—and to *retain* means, necessarily, the right to resume it after a temporary absence undertaken with the intent to return—is not to be presumed. Unless, therefore, the present act contains provisions from which, expressly or by necessary implication, it appears that as it was the intention of Congress to restrict or deprive the resident alien of domiciliary rights once acquired, it is hard to see how the general provisions relative to the admission, exclusion, or deportation of aliens can be deemed to apply to the members of that class.

If the act does not include them in its operation, then such persons on return from a temporary absence are not seeking admission to this country under any law of the United States, and if excluded by the immigration officers under color of the act, the administrative decision is not final, and the courts have full power to pass on such cases unfettered by the restrictive provisions of the Act of August 18, 1894, which is now embodied in the existing law.

As before stated, none of the acts preceding that of March 3, 1903, had been held to include domiciled aliens within their provisions, although, as appears by the citations already given,[95] the precise point had on various occasions been submitted to the determination of the courts; and attention has been called to the fact that this principle had been maintained in no uncertain terms by the very circuit judge who rendered the decision in the Taylor case. The reason for the change was not because the court failed to adhere to its view, expressed in preceding decisions, that aliens domiciled in this country and returning thereto are not immigrants, but because the Act of 1903 in re-enacting certain provisions of the preceding act substitutes the term "aliens" for "alien immigrants," which hitherto had appeared in the corresponding sections. It may be stated, in this connection, that the word "immigrants" is omitted in the present act in the sections

[95] *Ante*, pp. 429, 430.

corresponding to those of the Act of 1903—the same omission which led to the Taylor doctrine; but it is to be observed that these sections deal with the obligation of ship-owners and transportation companies "bringing" or "landing" aliens in the United States, and have nothing to do with the designation of what classes of aliens are to be excluded, or with the instrumentalities by which such exclusion is to be effected.

It is also to be observed that, in section 2 of this act, of the act of 1903, and of its predecessor of 1891, which, in all these acts, enumerates the various classes of aliens subject to exclusion thereunder, the word "aliens"—not "alien immigrants"—has invariably been used. Had the Act of 1891 referred to those excludable under its provisions as "alien immigrants," or "immigrants," in the section devoted exclusively to their classification, and had this designation been changed to "alien" in the corresponding section of the act of 1903, the significance of the change might well have been apparent. But the Act of 1891, as before stated, designates the classes of "aliens" excludable; and still was held to exclude only certain classes of alien immigrants and to have no application to aliens not coming here in that capacity.

In the Taylor case[96] the same court said, in construing the act of March 3, 1903: "The word 'alien' is a broad one with a definition wholly unambiguous and clearly understood by all, lawyers and laymen alike, * * * 'alien immigrant' is a less comprehensive term than 'alien', and when it is deliberately discarded for the broader term the change is highly significant." Of what small significance the Supreme Court thought this change, appears in the opinion which reversed the Taylor case on appeal[97] where the court remarked: "We can see no reason to suppose that the omission meant to do more than to avoid the suggestion that no one was within the act who did not come

[96] *Ante*, p. 427.

[97] Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

here with the intent to remain," and held that the term "alien" as used in the section of the act, subject to its consideration on the issues before it, did not include alien seamen on ordinary shore leave. But to say that the act affected aliens other than immigrants is far from saying that is affected all aliens, including resident aliens returning from a temporary absence abroad. The Supreme Court's decision seems to be limited to holding, first, that the word "aliens," as used in the Act of 1903, did not include all aliens; and, second, that the omission of the word "immigrants" might have this significance and no more: that it extended the operation of the act to aliens other than those who might come to the United States for the purpose of making it their home.

In the present act section 24 is repeated and section 25 followed the general doctrine as to the alleged significance of the change of "alien immigrants" to "aliens" in the Act of 1903 have, in assuming that the same significance is to be attached to the repetition of the term "aliens" in the corresponding sections of the present act, overlooked a change of wording in the Act of 1907, which, according to the general line of statutory interpretation which they adopted, must be of at least equal significance.

Section 24 of the Act of 1903 provides for the appointment of immigration officers with power to admit aliens; but that every alien who may not appear to the examining inspector to be clearly and without doubt entitled to land shall be detained for examination in relation thereto by a board of special inquiry. Section 25 provides "that such boards of special inquiry shall be appointed by the commissioners of immigration at the various ports of arrival as may be necessary for the prompt determination of all cases of aliens detained at such ports under the provisions of law."

It is to be noted moreover that those courts which have likewise, except that in the latter the term "aliens" is set aside, and the term "immigrants" is substituted therefor.

That this change was deliberate and not the result of inadvertence is shown by the history of the bill from its presentation to its passage. As introduced by Senator Dillingham in the Senate on February 14, 1906, section 25 contains the word "immigrants." On that date it was read and referred to the Committee on Immigration. On March 29 it was reported with amendments with the word "immigrants" stricken out and "aliens" substituted. In this shape it passed the Senate on May 23, 1906. On May 24 it was referred in the House to the Committee on Immigration and Naturalization, and on the 29th reported with an amendment and committed to the Committee of the Whole House on the State of the Union and ordered printed with the word "aliens" stricken out and the word "immigrants" again in its place. On June 30, it was again ordered printed as amended by the House and submitted to conference. On its return from conference the word "immigrants" was retained.

It is significant that, during the period of time extending from the date of the presentation of the bill until its passage, the following cases, touching directly on the point as to whether or not the Act of 1903 operated on all aliens, were decided in the Federal courts: The Aultman case,[98] where the act was held not to apply to a resident alien on his return from a temporary absence in Canada; the Buchsbaum case[99] to the same effect; the Rodgers case,[100] sustaining the Buchsbaum decision on appeal; and the Taylor case,[1] which held flatly that the act applied to all aliens.

Thus the question of whether or not the act of 1903 applied to resident aliens came squarely up for judicial determination at a date preceding that on which the bill was

[98]United States v. Aultman, 143 Fed. 922.

[99]*In re* Buchsbaum, 141 Fed. 221; see Rodgers v. United States, 152 Fed. 346, affirming this decision.

[100]Rodgers v. United States, 152 Fed. 346.

[1]Taylor v. United States, 152 Fed. 1; reversed in 207 U. S. 120, 52 Law Ed. 130.

presented, and Congress must therefore have been cognizant of such fact; and it does not seem unreasonable to conclude that the change in the present act was the result of the intention to remove any doubt which had arisen by reason of the omission of the term "immigrants" from the act then in force, particularly in view of the long established and hitherto uniformly accepted doctrine that the immigration acts did not apply to foreigners who had acquired a domicile in this country. The least that can be said, however, with regard to the significance of this change is that whatever ground may have been deemed sufficient to justify the view that the Act of 1903 applied to all aliens, based as it was on the sole circumstance of the absence of the term "immigrants" in that act, must necessarily have no further bearing in the face of the deliberate substitution of terms in the present act, and particularly where that substitution occurs in the section defining the jurisdiction of the only instrumentality vested with power to exclude in the first instance.

It seems, then, that, shorn of whatever significance may have been supposed to result from the absence of the term "immigrants," the present act must be classified with those antedating 1903, uniformly held by the courts not to apply to domiciled aliens, unless it contains additional provisions which indicate clearly that prior domicile shall not be a bar to its operation.

Section 21 provided that aliens found within three years after entry to be unlawfully in the United States are subject to deportation under the act. Unlawful presence in such cases must be the result either of unlawful entry in the first place, or of acts done by the alien subsequent to lawful entry, which make the presence of the alien in the country unlawful. The only condition imposed by the act on the right to *acquire* a lawful residence is the fact of lawful entry; and if the rights acquired by such domicile are subject to restriction or abrogation in specified cases,

this must appear plainly from the provisions of the act itself.

Since section 2 provided that disqualified aliens can never enter lawfully, it follows that they can not acquire a lawful domicile on which the claim to retain the right to re-enter can be predicated during the three year period during which they are subject to deportation. The present act places a restriction on the rights ensuing from domicile even after lawful entry with regard to certain designated classes of aliens—prostitutes and persons connected with houses of prostitution—for, under section 3, as amended by the Act of March 26, 1910, persons who become members of the objectionable classes specified therein can, at any time after entry, be deported. This amounts to a specific declaration on the part of Congress that, notwithstanding that they have obtained a lawful residence in this country, such aliens are subject to expulsion, and the plea of domicile cannot avail them—that, even after lawful entry, aliens who fall beneath the ban of section 3 forfeit their right to retain their domicile in the United States.

In these instances only does the statute provide that rights inherent in domicile lawfully acquired are, under its provisions, subject to abrogation; and to this extent only does the municipal law curtail domiciliary rights which, in the absence of municipal enactment, international law presumes. The provisions contained in section 20 of the Act of 1907, authorizing the deportation within three years after landing of any alien who within that time shall be found to have became a public charge through causes existing at the time of his entry, would seem to be based on the theory that, being at the time of admission likely to become a public charge, he was at that time subject to exclusion, and his entry, although permitted by the immigration officers, was in reality not in accordance with law.

In reaching the conclusion that aliens who have ac-

quired a domicile in this country, and return for the purpose of continuing to maintain it, are not subject to the excluding provisions of the immigration law, the Circuit Court of Appeals for the Ninth Circuit expressed itself as follows: "Aliens have always been allowed to reside in the United States and acquire property there * * and their right to return to the United States, after having temporarily left the same with intention to return, has always been recognized. It is not to be presumed that Congress intended to change the whole trend of its prior legislation in regard to alien residents."

Granted that the rule that retention of a domicile already acquired, in the absence of specific legislation to the contrary, has been, as the court states, always observed in this country, this principle of international law, like the provisions of municipal law, must be subjected to a reasonable interpretation, and should not be invoked or enforced under conditions where its application would be obviously inappropriate.

Since it is entirely within the power of a sovereign state to refuse to allow aliens to acquire a domicile within its territorial limits, or if they have acquired it, to pass laws the result of which may be to deprive them thereof, or to allow the privilege of domicile to aliens of a certain class and to deny it to others, it seems plain that whatever domiciliary rights the alien may assert can be claimed only on the basis of the willingness of the state to consent to their enjoyment.

If there is no municipal provision regulating or restricting the method in which these rights can be acquired or exercised by foreigners, international law assumes that, by being permitted to take up his residence in the country, the alien stands on a par with the citizens of the state in the full enjoyment of his domiciliary rights. The right to maintain a domicile necessarily includes the right to retain it; and the right to retain it includes that of the physical resumption of the rights incident thereto, pro-

vided that the voluntary interruption of the actual enjoyment of those rights does not involve the renunciation thereof. Since the acquisition of domicile depends wholly on the consent of the sovereign, the exercise of every right flowing from or incident thereto is traced to the same source.

It follows that the right to resume the exercise of the rights incident to a domicile which has not been renounced within the territorial limits of the state in which it was acquired must depend on the continuing assent of the sovereign to the further enjoyment thereof. But it sometimes occurs that aliens excludable under the immigration laws succeed in evading the immigration officers and in establishing a residence in the United States for a period longer than that within which they are subject to deportation if the unlawful presence is discovered; or that foreigners who, when permitted to enter, were competent to acquire a domicile under the immigration laws, and yet who, on their return from a temporary absence, are affected with disabilities which, had they existed at the time they first presented themselves for admission, would, if detected, have prevented them from acquiring a residence here. They can enter only on consent of the United States, expressed or implied; and in order to determine whether such consent exists reference must be had to the appropriate provisions of the immigration act in their application to the facts presented by a given case, or class of cases.

For the purposes of this discussion aliens who enter the United States may be classified as follows:

(a) Those who enter the country and (1) do not acquire a domicile here, or (2) acquire a domicile but renounce it.

(b) Those who acquire a domicile after (1) lawful entry, or (2) unlawful entry

B. ALIENS WHO AFTER ENTERING THE UNITED STATES

(1.) Fail to acquire a domicile.

An alien who has been permitted to enter the country and fails to establish his domicile here—in other words, does not take advantage of the opportunity of acquiring domiciliary rights afforded him by permitting him to land—and, after leaving the country, seeks to re-enter, cannot successfully urge that the mere fact of prior entry has vested him with the right to return. The right to return to an existing domicile is one of the incidents necessary to its maintenance; and it would be idle to contend that when a State has consented to the establishment of a domicile within its borders by an alien, such grant does not include the exercise of all acts incidental to its maintenance. But, on the other hand, if domicile does not exist, no justification can arise for the exercise of a right which can only exist as incidental to an existing domicile. In the case of United States v. Rodgers and Four Similar cases[2] decided by the Circuit Court of Appeals for the Third Circuit, the court said: "The alien after his first entry into this country stayed two years and then returned to his old home, where he stayed one year. He then returned to the United States at the suggestion of his cousin who lived in Philadelphia and who sent him the money for his passage, promising to procure work for him. There is no evidence that a permanent domicile was acquired by this alien on his first entry into the United States; no evidence that either wife or family, though he testified that he had both, came with him at that time; his return to his native country was not for a specific purpose, nor his absence a temporary one. So also in the case of Maretta, who, on his first coming to the United States, resided for one year at Tomkinsville, New York, and then returned to Italy where he remained for three years. He testifies that

[2]United States *ex rel.* Barlin v. Rodgers, 191 Fed. 790.

he came to this country because he was out of work, and that he left his wife and three children in Italy. It will thus be seen that all the facts in both of these cases absolutely negative the acquirement of any domicile by the appellants in this country before their return to Italy. And they not only negative any temporary purpose in returning, but strongly point to the intention of permanently remaining in their old homes. We have no difficulty in holding that both of these last-mentioned appellants were alien immigrants upon their last arrival in this country and as such subject to the provision of the immigration laws of the United States." In the concluding sentences of its decision the court affirms the principle asserted by it in an earlier decision[3] that, where the facts show that an alien has actually acquired a domicile here and leaves it temporarily, *animo revertendi,* to return to his native county for a specific purpose, he is not on his return an alien immigrant and consequently not subject to the operation of the immigration law.

(2.) Renounce a domicile once acquired.

The court's refusal to grant the writ of *habeas corpus* was because it found that the petitioner had never acquired a domicile in this country; but the result would unquestionably have been the same had it found that a domicile had actually been acquired but was subsequently abandoned.

What effect the acquisition of domicile has upon the claim to re-enter without being subjected to the operation of the immigration laws may, it is thought, be examined to advantage by adopting the following classification:

C. ALIENS WHO ACQUIRE A DOMICILE.

(1.) Where the Original Entry is Lawful.

1. Where the alien while physically here or abroad commits no act, and becomes a member of no class, the

[3]Rodgers v. United States, 152 Fed. 346.

commission of which or membership in which, if detected, would render him subject to expulsion.

2. While physically here or abroad commits some act which renders him subject to expulsion or becomes a member of a class all members of which are subject to expulsion from the country—such as prostitution, receiving benefit from the earnings of prostitutes, or who protect or promise to protect prostitutes, or is employed by or in connection with any house of prostitution.

3. Becomes while abroad one of a class or profession, membership in which is determined by the acceptance of a code of morals or a political creed which would at the time of entry have made him excludable under the immigration law, but which would not, if acquired after entry, subject the alien to expulsion under the immigration law—such as polygamists or persons who admit their belief in the practice of polygamy, or anarchists or persons who believe in or advocate the overthrow by force or violence of the government of the United States or all governments or the assassination of public officials.

4. Who when abroad commits an act which, if committed here, would not render him liable to expulsion, but which, if it had been committed prior to his admission would have been a bar to his admission,—such as the commission of a felony or other crime or misdemeanor involving moral turpitude.

5. Where the conditions under which the alien entered under an earlier act, and which involved no question of physical, mental, or moral disability, did not render him excludable under that act, but would have operated to exclude him under the new act in force on his return had he then sought to enter for the first time—for example, when the alien entered under a contract to labor in this country when an act which did not exclude contract labor was in force.

(2.) Where the Original Entry is Unlawful.

1. When the alien seeks to re-enter within the period in which, had his unlawful presence been discovered, he would have been subject to deportation.

2. When he leaves before the period has run and returns after its expiration.

3. When he leaves after its expiration.

(1.) Where Original Entry is Lawful.

1. When an alien seeking admission to this country and after being duly examined by the inspecting officers, is found to be suffering with no disability, physical, mental or moral, which would operate to exclude him, his right to acquire and maintain a domicile here under the conditions prescribed by law is definitely established. It is true that nowhere does the act in so many words provide that he may acquire a domicile and continue to maintain it. But, as has been seen, the omission cannot be taken to militate against the right. There would be no reason for such a provision in an act dealing primarily with the subject of foreigners coming to the United States for the precise purpose of establishing their domicile here; and equally little ground for averring the existence of a right which international law assumes. The conditions imposed by the immigration act are primarily conditions incident to entry; but it also, and properly, defines certain rules of conduct which are to be observed by aliens in order to permit them to continue to reside in this country. It may be safely assumed that the legislators of Congress, when preparing the act, were familiar with the principle of international law so often referred to in these pages, and so constantly cited and upheld by the various courts of this country. They were doubtless aware of those decisions which, rendered under the acts preceding that of March 3, 1903, were unanimous in holding that the previous acts on immigration passed by their predecessors had no application to aliens who had

acquired a domicile here. They unquestionably knew that, in the absence of municipal legislation to the contrary, the acquisition of domicile in this country by aliens involved the right to retain it whether manifested by physically uninterrupted residence or by the voluntary resumption of existing rights after a temporary departure from this country. But it was equally manifest to them that domiciliary rights acquired by an alien were of minor importance when weighed in the balance against the best interests of the state. Hence the three year provision in section 21 and the provisions of section 2 as amended by the Act of March 26, 1910, sweeping in their effect as against certain classes of undesirable aliens who might lawfully acquire a residence here, but whose continued presence might prove a menace to the morals of the community if allowed to remain. The effect of section 21 is to provide that a domicile of less than three years' standing cannot avail the alien who has entered this country unlawfully; but section 3 as amended looks to the loss of domiciliary rights irrespective of their duration when the foreigner engages in pursuits prohibited to him in his capacity as a foreigner under the immigration law. But, as before stated, these appear to be the only restrictions imposed by the act on the right to maintain a domicile lawfully acquired. And it cannot be doubted that the weight of judicial authority is to the effect that the excluding provisions of the acts of 1903 and 1907 were not intended to cover the case of an alien lawfully domiciled here, and who has observed the conditions on which his domicile may be maintained.

In 1907 the Circuit Court of Appeals for the Third Circuit in affirming the decision of the District Judge *in re* Buchsbaum[4] passed on the following state of facts: The petitioner in the court below arrived in this country in 1901. In March, 1905, he declared his intention to become a citizen of the United States, having for the four

[4] *Ante* p. 437.

years last past maintained a residence in the United States, and in April, 1905, left for his native country, Austria, with the intention of staying there only so long as was necessary for the purpose of settling an estate and of then returning to this country. He returned in November 1907, when the immigration officials found that he was afflicted with trachoma and ordered his deportation. He was released on habeas corpus proceedings and the Government appealed. The court found that the evidence showed beyond dispute that on his arrival with his family in 1901 he made his home in New York, where he continued to reside and to conduct his business for years; that since that time he had never changed or intended to change his domicile. That his absence was merely temporary and for a specific purpose, and that on his return he did not at that time seek to acquire a fixed residence in the United States; that had been theretofore accomplished. "We think," said the court, "that....Congress did not intend that exclusion under the act on account of loathsome or dangerous contagious disease should extend to aliens domiciled in this country. In reaching this result the body of the act has been considered in its entirety in connection with its title and in the light of other statutes in *pari materia*. The title is: "An Act to regulate the immigration of aliens into the United States." Certainly if taken alone it would indicate the inapplicability of the act to the case of Buchsbaum. It is well settled that where the language of a statute is ambiguous or otherwise doubtful, or, being plain, a literal construction would lend to it such absurdity, hardship, or injustice as to render it irrational to impute to the law-making power a purpose to produce or permit such result, the title may be resorted to as tending to throw light upon the legislative intent as to its scope and operation."[5]

[5]Citing United States v. Fisher, 2 Cranch. 358, 386, 2 Law Ed. 304; Holy Trinity Church v. United States, 143 U. S. 457, 36 Law Ed. 226; Coosaw Mining Co. v. South Carolina, 144 U. S. 550, 563, 36 Law Ed. 537.

After citing various sections of the act obviously applicable to the case of foreigners newly arriving in the ports of this country, the court proceeds: "To apply these and other provisions in the act, solely on account of temporary absence from the United States on business or pleasure, to aliens domiciled in this country, many of whom have here had their homes and families for years, carried on business and acquired wealth and distinction, and have while here received equally with citizens protection of person and property would, we think, not only create repugnancy between the body of the act and its title, but require a harshness of construction or interpretation never contemplated by Congress. * * * Had Congress contemplated such a radical departure from the policy embodied in the earlier statutes touching importation of aliens as to provide for their exclusion, although not immigrants, but domiciled in this country, it is reasonable to assume that such intent, in view of such abrupt change of policy, would have been plainly expressed in the body of the act and also that a title other than 'an Act to regulate the immigration of aliens into the United States' would have been adopted."[6] And the view herein announced was expressed in the recent decision of the same court in the case of United States v. Rodgers.[7]

In passing on the right of a Japanese domiciled in the territory of Hawaii, who had left his home to take part in the war between Japan and Russia and who, on his return, was excluded on the ground that he had trachoma, the Circuit Court of Appeals for the Ninth Circuit, in affirming the judgment of the United States District Court for Hawaii, which had ordered the petitioner to be discharged on a writ of *habeas corpus,* expressed itself as follows:

"If this Act (of 1903) were unaffected by the prior legislation" (which had been held to apply uniformly to alien immigrants and not to affect the rights of resident

[6]Rodgers v. United States, 152 Fed. 346.
[7]*Ante,* p. 442.

aliens) "of which it is amendatory, there might be ground for saying, from its inclusive language, that it is directed against all aliens coming into the United States; but aliens have always been allowed to reside in the United States and to acquire property there, while at the same time maintaining their citizenship in the country from which they came, and their right to return to the United States after having temporarily left the same with intention to return, has always been recognized. It is not to be presumed that Congress intended to change the whole trend of its prior legislation in regard to alien residents construed as that legislation had been by the courts without expressing that intention in terms so clear as to leave no room for doubt. We find no such change of phraseology as to justify that conclusion."[8]

The case of United States v. Aultman Co.[9] presented the following facts: An alien, after having been admitted to the United States in 1891, remained here for twelve years without setting foot out of the country until, in July 1902, he went to Canada to help break a strike there. At the end of two weeks he was called upon to assist in breaking a strike at Canton, Ohio. The company which undertook to employ him was prosecuted on the ground that inducing him to come from Canada to Ohio for that purpose was a violation of the provision in the Act of 1903 prohibiting the importation of aliens into the United States to labor under contract. The case turned on the point as to whether he was an alien immigrant under the Act of 1903. The court held that "the unbroken current of authority is that he was not an immigrant within the meaning of this statute."

It would seem that in such cases as these the correct conclusion does not depend on interpretations based either on the substitution of the word "aliens" in certain sec-

[8]United States v. Nakashima, 160 Fed. 842.

[9]143 Fed. 922, district court, northern division Ohio; affirmed *per curiam* by Circuit Court of Appeals for Sixth Circuit.

tions of the acts of 1903 and 1907 for "alien immigrants" in the Act of 1891, or the deliberate change of the term "aliens" as used in section 25 of the Act of 1903 to "immigrants" in the corresponding section of the present act. The real question to be determined is whether, without so stating in terms that cannot be misunderstood, Congress intended to deprive foreigners who have been invited to enter the country of domiciliary rights, acquired and maintained in strict accordance with the law, merely because when temporarily absent on their lawful errands they have been so unfortunate as to contract a disease, or to do something which would place them in the category of the excluded classes were they seeking to enter for the first time. It was on this broad ground that the District Judge who passed first on the Buchsbaum case appears to have based his decision. "I lay no stress," he says, "upon the fact that the relator has declared his intention to become a citizen, except as such declaration is relevant to the inquiry whether he is a *bona fide* resident of the country. After an alien has once become a resident he is entitled to the same liberty of movement enjoyed by residents and citizens alike; and until he abandons his residence he is no longer amenable to the excluding provisions of the immigration law. That law is intended to operate when the immigrant presents himself for the first time, but after he has passed the scrutiny of the inspectors and has been admitted he is then entitled to the rights and privileges of residents in the United States as long as he continues to be a member of this class. * * * Such an immigrant must fulfill certain requirements or he will not be allowed to land; but having been once admitted and having once acquired a residence in good faith, he is not obliged to stay in the country until he becomes a citizen at the risk of being excluded until he returns to his family or his home."[10]

[10]141 Fed. 221; but see, *contra*, Lo Po v. McCoy, 8 Phil. Rep. 343, where the Board of special inquiry excluded a returning Chinese merchant, law-

Since the attempt to re-enter must, in order to be sustained, be deemed to be made with the consent of the United States, it is plain that whether or not the alien is subject to exclusion must depend on the facts of each case as it arises. It is obvious that, while consent may be assumed to exist under conditions analogous to those facts which appear in the cases just cited, it might not, on the contrary, be assumed where the person seeking to re-enter is a prostitute or a procurer with a domicile in this country. The court's decision should not, it would seem, be made to depend on legal technicalities. In Ueberall v. Williams[11] the relevant facts were that the relator came into the country from Holland more than three years before the warrant for his departure was issued. Shortly before the arrest, being in the city of Niagara Falls, in the State of New York, he took a carriage over to the Canadian side of the falls apparently for the purpose of viewing them. After staying there for an hour or more, he came back into the State of New York where he was arrested and ordered deported as an alien who had entered the country within three years and was a member of the excluded classes. The nature of the disability does not appear from the report.

The court said: "The first question to be determined is whether the relator entered this country within three years of the time of his arrest. Since the decision of the Circuit Court of Appeals of this Circuit, *in re* Annie Lapina[12] this question has been authoritatively settled. I do not see how the duration of the period of absence in a foreign country or its purpose can affect the result. This par-

fully domiciled in the Philippines, who, at the time he sought to re-enter was suffering with trachoma; and because the applicant was so afflicted, excluded his minor son who was accompanying him. The excluding decision was upheld by the local Supreme Court; see also Ko Poco v. McCoy, 10 Phil. Rep. 442.

[11]187 Fed. 470.

[12]*In re* Hoffman, 179 Fed. 839; 2nd Circuit.

ticular instance is no doubt as extreme as can arise but it does not affect any change in principle."

The question presented by the facts of the Hoffman case was whether or not an alien woman who, after her admission, practiced prostitution in this country, and after reentering under a false name and by representing herself to be the wife of an American citizen, can claim on arrest after the second entry, immunity from the operation of the immigration laws on the ground of domicile previously acquired in the United States. Yet the court, in affirming the decision of the court below discussing the writ filed by the petitioner states that "the single question presented is whether the provisions of the Act of 1907 apply to an alien who after entry into this country has remained here for more than three years, and then, after a brief absence abroad, again seeks to enter the United States," and proceeds on the theory that nothing more is involved than "this question of construction of the Act of March 3, 1903 .....before us in Taylor v. United States." [13]

It is apparent from the language of the court in the Ueberall case that the fact that the applicant was found to be an alien suffering from a disability which operates to exclude under the immigration law, irrespective of whether domicile has been acquired, was thought sufficient to prohibit the court from interfering on behalf of the petitioner—in other words, that no matter how many times any domiciled alien leaves the country, if even for an hour, he is always subject to the operation of the act. That this is directly *contra* to the weight of authority the cases cited above show. A still more recent expression of opinion on the general question is to be found in the case of Lewis v. Frick.[14] There the petitioner had lawfully entered this country in 1904 and was domiciled here. In November, 1910, he crossed the Canadian line into Canada and returned within an hour with a woman whom he

[13] *Ante*, p. 427.

[14] 189 Fed. 146, reversed in 195 Fed. 693.

claimed was his wife. He was arrested and indicted by the grand jury on the charge of importing the woman into the United States for an immoral purpose. On being acquitted he was arrested and held for deportation on four separate charges, including that on which he had been indicted and acquitted. The court held that there was no authority under the immigration law for deporting an alien because he has imported a woman for immoral purposes, in the absence of a conviction of the offense obtained under criminal process, as provided by section 3. In the course of the opinion the court said: "There has been great diversity of holding under varying circumstances as to the effect of a temporary return to his native country by an alien who had established a domicile in this country. Sometimes it is quite clear that the return therefrom to this country must be considered a new entry and sometimes whether a new entry might be a question of fact; but I find no case supporting the theory that where an alien has an established residence and occupation in this country, which has extended, as in this case, for six years, and when he crosses the border, not into his native country but into another foreign country, and so crosses for a mere temporary purpose and returns within an hour, particularly at a point like the Detroit-Windsor crossing, where hundreds are crossing and recrossing every day, I can find no support for the theory that the return in such case must be considered as the entry to which the immigration laws relate." [15]

2 While Physically Here or Abroad Commits Some Act Which Renders Him Subject to Expulsion.

If an alien who has lawfully entered the country can lose rights of domicile legally acquired it must be by some positive declaration of the municipal law. Section 3 specifically designates in the following terms how domiciliary rights thus acquired shall be forfeited by the alien:

[15]Reversed in Frick v. Lewis, 195 Fed. 693; and see *ex parte* Pouliot, 196 Fed. 437.

"Any alien who shall be found an inmate of or connected with the management of a house of prostitution or practicing prostitution after such alien shall have entered the United States, or who shall receive, share in, or derive a benefit from, any part of the earnings of any prostitute; or who is employed by, in, or in connection with, any house of prostitution or music or dance hall or other place of amusement or resort habitually frequented by prostitutes or where prostitutes gather, or who in any way assists, protects or promises to protect from arrest, any prostitute, shall be deemed to be unlawfully within the United States and shall be deported in the manner provided by sections twenty and twenty-one of this act."

The commission of any of the prohibited acts or participation in any employment or calling enumerated in this section, if detected by the authorities, means the withdrawal of the consent of the sovereign to remain; consequently, it needs no argument to show that the claim to enter, based as it would necessarily be on domiciliary rights which have been revoked, could find no justification whatsoever.

The following cases, although not arising in connection with circumstances involving a return of the alien from a temporary absence abroad, are examples of the application of this principle.

In the case of Sire v. Berkshire,[16] the facts were that an alien woman who entered this country in April, 1906, and who had been arrested in July, 1909, charged with being unlawfully in the country, but had been discharged, was re-arrested in February, 1911, after the Act of March 26, 1910, had gone into effect, on the charge of engaging in prostitution. The court said: "It does not appear from the order of the Secretary nor from the allegations of her petition that she was arrested for practicing prostitution or for being an inmate of a house of prostitution prior to the passage of the Act of 1910." The order was based on acts committed after that time which were such

[16] 185 Fed. 967.

as to entail a loss of such rights of domicile as she had acquired under express legislation to that effect. Consequently, her plea of prior domicile could not avail her. The same result was reached in United States v. Prentis,[17] where the woman arrived here in 1906, and was arrested in June, 1910, on the charge of being an inmate of a house of prostitution; and in the United States *ex rel.* Mango v. Weis,[18] in which case the court said: "She is not now being deported since the passage of the act because she was an inmate of a house of prostitution before the passage of the act, but because she was an inmate of a house of prostitution after its passage."

These decisions are in entire accord in principle with prior decisions rendered under the Act of 1907 and before the amendment of its third section, in holding that previously acquired rights of domicile give rise to no vested right to enter or remain under conditions under which the law expressly declares that they shall be forfeited.[19] Similarly, section 3, as amended by the Act of 1910, has been held to apply to all aliens, prostitutes and others carrying on, or connected with, like pursuits, whether they entered prior to or after the enactment of the amendment. This is the necessary result of the wording of the amendment which, if construed otherwise, would be without the effect which it was obviously intended to produce.[20] The same result was reached in decisions rendered prior to the amendment, where the claim was made that prostitutes arriving under the Act of 1903 were not subject to expulsion or exclusion under section 3; but the exemption claimed was held to be avoided by section 28 of the act which provides that "nothing contained therein shall be held to affect any prosecution brought, or any act done or existing

[17]182 Fed. 894.

[18]181 Fed. 860.

[19]See *Ex parte* Durand, 160 Fed. 558; Looe Shee v. North, 170 Fed. 566.

[20]Sire v. Berkshire, 185 Fed. 967; United States v. Prentis, 182 Fed. 894; United States v. Weis, 181 Fed. 860, *supra.*

at, the time of the taking effect of the act, but that as to all such prosecutions or acts and matters the laws or parts of laws repealed or amended by this act are hereby continued in force and effect." [21]

The condition of the law as to prostitutes and others engaged in or connected with similar pursuits is that under section 2 their admission into this country is prohibited while section 3 makes it impossible for such persons to remain; and the law applies equally to those who are prostitutes at the time of entry or become so after the acquisition of a domicile here. Again, it would seem that it is the fact of their prostitution which makes it impossible for them to enter or remain; their right to do so does not depend on the place where the acts of prostitution are committed. It would now be idle for an alien woman who, while domiciled here, had led a blameless life, to enter upon immoral practices while abroad and then attempt to base her right to return on the plea that her rights of domicile had not been forfeited by her acts. Since the right to return can only be claimed as one of the rights incidental to a continuing domicile, the correlative obligations incident to such residence cannot be avoided; and since the state has declared that the retention of a domicile acquired in this country is conditional on the maintenance of a certain moral standard, it is obvious that the intention of the law-making power was to provide that failure to do so by an alien must terminate *ipso facto* all rights made dependent thereon.

3. When the Alien When Abroad Becomes or Remains a Member of a Class Excluded from Admission—Such as Polygamists and Anarchists.

If an alien who has lawfully entered this country and acquired and maintained a lawful domicile here becomes, during a temporary visit abroad, converted to the tenets

[21] *Ex parte* Durand, 160 Fed. 558; Looe Shee v. North, 170 Fed. 566.

of polygamy, can he, when seeking to be readmitted in this capacity, base his right to enter on existing domiciliary rights? It is plain that he can do so successfully, granted that the entering into his new and, to us, objectionable, belief does not, *ipso facto,* put an end to such rights unless an intention that such a result will follow is to be found in the statute. On the one hand, it can be urged that the designation of such persons as members of the excluded classes is of itself sufficient to show it was the intention of Congress not to permit them to acquire a domicile, and, consequently, not to retain one, if acquired; that all aliens seeking admission to this country do so with the knowledge that if found to belong to certain classes they will be subject to exclusion and hence, that if allowed to enter, it is only on the condition that they will continue to maintain their unobjectionable personal status; that by allowing aliens unobjectionable at the time of entry to enter and establish their homes here, it was not the intention of Congress to make it possible for the alien, during a temporary absence abroad, to become of his own will a member of a class excluded by law, and to re-enter unmolested by the immigration officials.

On the other hand, it can be said that in allowing aliens to enter and reside here the state guarantees them the free enjoyment of domiciliary rights to the same extent as enjoyed by Americans, except in so far as those rights are or may be restricted by such conditions as Congress may see fit to impose, and that these conditions must be clearly expressed, either directly or by implication, in the law governing the subject; that after being admitted an alien can only be expelled when found unlawfully here, and that in order to be found unlawfully here he must be found to have entered contrary to law, or to have committed some act which, after entry (and whether entry is lawful or unlawful), gives the state the right to deport him; that in the only section in which provision has been made for the deportation of aliens who have acquired a

domicile here because of the commission of prohibited acts or by being or becoming members of objectionable classes, polygamists are not included as of the number; and that, finally, when Congress has not seen fit to exercise its undoubted power of terminating domiciliary rights lawfully acquired when he who enjoys them is actually in the country, it cannot be assumed, in the absence of specific legislation, to have intended to put an end to them merely because the possessor, at the time of the assumption of the objectionable status, happens to be beyond the territorial limits of the United States.

The latter view would seem to be the sounder of the two, and to apply in the case of all lawfully domiciled aliens other than those excepted from its operation through having been made the object of special legislation looking toward the loss of residential rights by the commission on their part of prohibited acts.

4. Who, When Abroad, Commits An Act Which, if Committed Here, Would Not Render Him Liable to Expulsion.

If the view is correct that domiciliary rights, in the absence of municipal provisions stating the conditions under which they are subject to termination, coupled with the fulfilment of the condition, continue to exist in aliens who, when abroad, voluntarily assume a status which would subject them to exclusion had no domicile been acquired, it must be conceded that the same principle is applicable to the case of a domiciled alien who, when abroad, commits some act or misdemeanor involving moral turpitude. That its commission in this country could not affect domiciliary rights is well settled.[22] "Jurisdiction to deport," said the court in the Frick case,[23] "cannot rest on this charge; and that is without regard to the date of the of-

[22]Lewis v. Frick, 189 Fed. 146—reversed in 195 Fed. 693; *Ex parte* Saraceno, 182 Fed. 955; *Ex parte* Koerner, 176 Fed. 478.

[23]*Supra.*

fense which was long after Lewis' actual entry into the United States. The latter consideration alone would end the question." Since Congress has not seen fit to make the commission of such an act within the territorial limits of the United States affect the alien's right to remain or enjoy domiciliary rights lawfully acquired, it is hard to perceive why it should operate to terminate them when done under circumstances where it would have no effect whatsoever on the members of the community in which the offender is domiciled.

An interesting state of facts is presented by the case of United States *ex rel.* Funaro v. Watchorn.[24] The petitioner, an alien, came to the United States in 1901, when he was duly admitted, and took up his residence in Pittsburgh, where he remained for six years. In 1907 he went to Italy for a visit and on his return in May, 1907, was detained by the immigration inspector as a person not clearly entitled to land. Upon his examination before the board of special inquiry he admitted that, before his first arrival, seven years previous, he had stabbed a man in Italy for an unprovoked assault for which he was convicted and sentenced to imprisonment for three months. He was excluded from admission and petitioned for a writ of *habeas corpus* on the ground that he belonged to a particular class of resident aliens excepted from the operation of the immigration act under Rule 4 of the immigration regulations of the Department of Commerce and Labor. The court found that he did not belong to such class and accordingly dismissed the writ. While the case does not furnish an example of a lawful entry in the first instance, since, at any time within three years after the entry the petitioner, had the facts been known, could have been deported under section 21 of the Act of 1903 on the ground of being unlawfully in the United States, it would seem that, after the expiration of that period, his presence

[24] 164 Fed. 152.

was lawful, at least in the sense that he had, under the law, acquired the right to remain unmolested in the enjoyment of his domiciliary rights. His domicile had been acquired long prior to the expiration of that period—but not having been acquired with the consent of the United States it could have been terminated at any time, and, had he left before the expiration of the period, he could not have based his claim to return on the existence of a domicile to which he had no right. But, having been admitted to residence under the forms of law, his presence was presumed to be lawful until the contrary should be proved by the appropriate officials. The time within which this proof could be presented is specifically limited by Congress. What can this mean except that Congress, satisfied that a residence apparently lawfully acquired is what it appears to be, henceforth gives its complete and unqualified assent to its continuance and to the exercise of all rights incident thereto? If, after the expiration of the three year period, the authorities had learned of the commission of the act, which at the time of his first arrival would have been a bar to his admission, they would have been powerless to expel him. His domiciliary rights were thereby fixed, except in so far as they were subject to restriction or loss by subsequent municipal legislation, or subject to abandonment at his election. The act, by virtue of its own provisions, having condoned the effect of a pre-existing disability, it can hardly be said that the petitioner's presence on return from abroad would come within the mischief which the statute seeks to avoid.[25]

5. Where the Conditions Under Which the Alien Entered Under an Earlier Act, and Which Involved No

[25]In the case of Prentis v. Stathakos, 192 Fed. 469, the facts were that the defendant when a child of fourteen killed another person in Greece, his country of origin, was tried and convicted of the crime and on the termination of his sentence came to this country and lived here for ten or fifteen years as a law-abiding resident with a good record. On the ex-

Question of Physical, Mental, or Moral Disability, Would Have Constituted a Bar to His Admission Had He Attempted to Enter for the First Time Under the Present Act.

Of course where the alien has entered this country as a contract laborer and the immigration acts in force at the time of entry do not exclude contract laborers, a domicile thus acquired is perfectly lawful in character and cannot be lost except by express statutory provision to that effect.[26] Thus it has been held that under these facts the Act of 1907, which excludes contract laborers, does not include the alien returning under these conditions within its operation.[27] It is obvious that the returning alien was not, at the time of his return, a laborer who had been "induced or solicited to migrate to this country by offers or promises of employment to perform labor" in this country of any kind. The use of the word "migrate" in section 2 of the act shows beyond peradventure of doubt that it had no application to foreign laborers already established here.

(2.) Where the Original Entry is Unlawful.

1. When the Alien Seeks to Re-enter Within the Three-year Period.

Just as Chinese merchants who present the proper credentials for entry prescribed by the exclusion laws are presumed to have the right to enter this country, and, if admitted on the contents of the certificate, are presumed

pulation of this period he went to Greece on a visit and in less than three years after his return was arrested by the administrative authorities to whom he divulged the fact of his former conviction. The Circuit Court of Appeals of the Seventh Circuit refused to interfere with the order of deportation; and see United States *ex rel.* Elliopulos v. Williams, 192 Fed. 536.

[26]And see *In re* Lea, 126 Fed. 234.

[27]Botis v. Davies, 173 Fed. 996; Davies v. Manolis, 179 Fed. 818.

to have the right to remain until the contrary is proved by the Government, so, also, aliens who are admitted under the forms prescribed by law are to be presumed to be lawfully in this country until the contrary is found by the Secretary of Commerce and Labor to be the case within the period of three years after entry. As before pointed out, it would seem that this provision would have no significance whatever unless it was the purpose of Congress by limiting the time within which the Secretary of Commerce and Labor can deport, to confirm the alien in those rights of domicile hitherto enjoyed, subject to termination at the discretion of the appropriate administrative authority.[28]

Care must be taken to distinguish between the conditional acquisition of domiciliary rights by the mere fact of residence in the country before the expiration of the three year period of residence, and the permanent acquisition thereof by their maintenance and enjoyment after the probationary period has passed. It is only aliens who have entered the country unlawfully to whom the three year provision applies. Another distinct class consists of those who, although entering lawfully, have forfeited their right to remain under the Act of March 26, 1910. These are subject to deportation without reference to the time of their entry.

Not only does the right of the Secretary to deport within the statutory period apply to aliens who have entered unlawfully by succeeding in evading the watchfulness of the immigration officers, but to those who, although having been found competent to enter, have later been held to be unlawfully in this country. Thus it has been held that the fact that a board of special inquiry as constituted by the Act of March 3, 1903, has passed favorably on the

[28]The raison d'etre of the so-called probationary period—distinct from that of the effects of its limitation to three years—is in part at least to give the governmental officers the opportunity to determine whether the entry of an alien was unlawful.

right of an alien to enter the United States does not exempt him from expulsion if later found to be unlawfully here.[29] It has long been settled that the favorable decisions of the board are binding "only where they are most likely to be questioned—in the courts," and that they do not constitute *res adjudicata* as against a contrary finding by the Secretary of Commerce and Labor;[30] and it has been held that the acquittal of a criminal charge is not *res adjudicata* of the same facts when charged again in deportation proceedings.[31] Although by entering and taking up his residence here the alien enters upon the enjoyment of domiciliary rights, they remain subject to termination within the period designated by the state as that within which it may exercise its right to expel him.

Section 21 provides that in case the Secretary of Commerce and Labor finds that an alien is unlawfully here, "he shall cause such alien within the period of three years after landing or entry therein to be taken into custody and returned to the country whence he came."

Although it has been held that the actual act of deportation must take place before the three year period expires,[32] the weight of authority seems to be to the effect that, under the present act it is sufficient if deportation proceedings have actually commenced within that time, and that the Government is entitled to a reasonable time within which to deport;[33] and that, if it is impossible to deport him within the statutory period because he is serv-

[29]Pearson v. Williams, 136 Fed. 734.

[30]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029; Lew Quen Wo v. United States, 184 Fed. 685; United States v. Nakashima, 160 Fed. 842; and see Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369; Mar Bing Guey v. United States, 97 Fed. 576; United States v. Lau Sun Ho, 85 Fed. 422.

[31]Williams v. United States, 186 Fed. 479.

[32]Botis v. Davies, 173 Fed. 996.

[33]Matsumura v. Higgins, 187 Fed. 601; United States v. International Mercantile Marine Co., 186 Fed. 669; United States *ex rel.* Calamia v. Redfern, 180 Fed. 506; but see *contra*, International Mercantile Marine Co. v. United States, 192 Fed. 887, reversing 186 Fed. 669, *supra*.

ing a prison term for the commission of an offense against the local laws, that fact will not be allowed to stand in the way of his deportation.[34]

Some difference of judicial opinion exists regarding the time when the three period begins to run. The act says that deportation may take place "within the period of three years after landing or entry." This has been construed to mean that the probation period runs from the date of the last entrance;[35] on the other hand, the words "landing or entry" were held, in a later decision, to refer to the date of the alien's first entrance into the United States.[36] This question may, however, be most advantageously examined in connection with the cases in which it has arisen. The fact that the Government reserves to itself the right to deport within three years after entry, constituting a clear declaration of the fact that aliens who are unlawfully here cannot acquire indefeasible rights of domicile because of their unlawful entry, applies irrespective of whether the alien remains in the country during the statutory period or departs on a temporary visit abroad. By going abroad with the purpose of returning, the rights of domicile, such as they are, are not abandoned; but the alien who returns within the three year period and is discovered to have entered unlawfully in the first instance, never having maintained those rights for the period within which the state could terminate them, they could not justify the claim to re-enter, which, as has already been pointed out, must, in order to be successful, be based on existing domiciliary rights maintained with the consent of the state.

2. Where He Leaves Before the Period Has Run, and Returns After Its Expiration.

[34]Matsumura v. Higgins, 187 Fed. 601; Calamia v. Redfern, 180 Fed. 506.

[35]United States v. Hook, 166 Fed. 1007; United States v. Sprung, 187 Fed. 903.

[36]Lewis v. Frick, 189 Fed. 146; Redfern v. Halpert, 150; but see *contra* Frick v. Lewis, 195 Fed. 693, and Siniscalchi v. Thomas, 195 Fed. 701.

Nor could an alien who has entered unlawfully and established his home here depart prior to the expiration of the period and, by returning after it has run, hope to avoid the operation of the act if held for deportation on the ground of being unlawfully in the country. It is obvious that it is only the uninterrupted physical maintenance of a residence for the three year period that can lay the foundation for the claim that domiciliary rights have been acquired free from the operation of the provisions of section 21.[37]

The same principle would seem to apply to cases arising under section 3 of the Act of 1907 prior to its amendment by section 3 of the Act of March 26, 1910. Before its amendment the section provided that any alien woman or girl who shall be found an inmate of any house of prostitution or practicing prostitution at any time within three years after she shall have entered the United States, shall be deemed to be unlawfully within the United States and shall be deported. By the repeal of this section by the Act of March 26, 1910, deportation may in these and other specified cases take place at any time after the original entry, lawful or otherwise.

3. When He Leaves After the Expiration of the Three-year Period.

Before the amendment of section 3 of the Act of 1907 by section 2 of the Act of March 26, 1910, the situation of the alien who entered this country unlawfully and that of the alien woman or girl who, within three years after entry, was found practising prostitution, was, with regard to the defeasible nature of domiciliary rights acquired by residence, identical. Members of both classes were subject to an order of arrest on the charge of unlawful presence here and to deportation within the statutory period. Both classes may then be properly considered under this section.

[37]See Lavin v. Lefevre, 125 Fed. 693.

With regard to the first, that of aliens who have entered unlawfully and, after a residence here of three years or more, depart temporarily and then return to this country, it is not unnatural that the number of precedents should be extremely small. If a foreigner has remained here for the statutory period without the fact of his unlawful presence being discovered, the chances are greatly in favor of its never being detected by the authorities, and that no objection could be found to his return based on that ground. Again, the disability which at the time of entry would have operated to exclude him, might have long since ceased to exist.

But where the disability takes the form of membership in a prohibited class, such as the prostitute class, which is maintained through and beyond the three year period and even up to the time of re-entry, the comparative abundance of cases arising under previous acts when the three year period was in force with regard to prostitutes, is easily explained.

In the case of United States v. Hook, decided by the District Court of Maryland in 1908,[38] the facts showed that the alien, a woman of Canadian birth, entered this country in 1901 and indulged in the practices of prostitution until 1905. She resumed her occupation in 1907, and in the fall of that year returned temporarily to Canada, where she stayed four days, and after her return continued her mode of life until arrested later in the same year. It was contended that she had acquired domiciliary rights in the United States of which she could not be deprived under any provision of the immigration law. But the court held that the three year period ran from the date of the new entry, and that, having committed acts of prostitution since that time, she was subject to deportation as one being unlawfully in the United States. Said the court: "Even a person who had been in the United

[38]166 Fed. 1007.

States for some years and who then returns to the country of her nativity and citizenship, and then afterwards reenters the United States for immoral purposes, seems to me to be clearly within the mischief against which the provisions of the law in question were directed"

Here the alien had, prior to the expiration of the statutory period, committed acts which subjected her to being found to be unlawfully in the United States. But the period passed before any action was taken against her. She was engaged in prostitution while both the Acts of 1903 and 1907 were in force, under either one of which she could have been deported if found within three years after entry to be unlawfully in this country. The court found that it was the intention of Congress to exclude persons in her condition if found to be indulging in prostitution six years after she had entered. It may well be asked how this conclusion could be reached in the face of the provisions of section 3 of both the acts, which in terms specifically refers to aliens indulging in such practices and specifically limits the time in which they could be expelled to three years. And if, while remaining in the country, she was not subject to expulsion where, in the absence of a declaration to that effect by Congress, could the authority be found to expel her merely because the course of her stay happened to be broken by a visit of four days across the Canadian border? The fact of remaining here beyond the statutory period could not, of course, vest her with an indefeasible right to continue her residence here against the expressed will of the state. The fact that, by the amendment of 1910, the three year period was done away with, is sufficient to show that, in the opinion of Congress, the existing laws were not competent to effect the purpose aimed at in the amendment, and constitutes strong ground for questioning the decision.

A later decision by the same court[39] indicates, perhaps,

[39]United States *ex rel.* Mango v. Weis, 181 Fed. 860.

a change of view. In that case an alien woman who had entered in 1906 and a few months thereafter became a prostitute, was arrested in July, 1910, under the Act of 1907, which, as amended, repealed the three year limitation. The court refused to interfere on her behalf, saying: "She is not now being deported since the passage of the act because she was the inmate of a house of prostitution before the passage of the act, but because she was the inmate of a house of prostitution after its passage. If she had seen fit, after the act was passed, to have adopted another mode of life, if any mode of life was open to her in her unfortunate situation, another and different question would have been presented." This is an admission that, having lived here for four years without being deported under the Act of 1907, there was no authority to deport her under that act. As before stated, if it is conceded that under that act the woman was free to exercise her rights of domicile unmolested while in the country, it is difficult to perceive how a temporary absence could, under the law, deprive her of rights thus acquired.

If this principle is correct in its application to aliens, who, during the period within which, under section 3 of the immigration law, as originally enacted, performed acts which if detected would have subjected them to expulsion, it would seem *a fortiori* to apply to those who, after the expiration of that period, entered upon such practices. It finds support in the decision in the case of Redfern v. Halpert,[40] rendered by the Circuit Court of Appeals for the Fifth Circuit in 1911. The facts in that case show that the alien arrived in this country, accompanied by her father, in 1901, when 13 years of age. Her father left after several years during which she acquired a domicile in this country Some time later, and after the expiration of three years from the date of original entry, she practiced prostitution, and in 1909 left the United States *animo revertendi,* and returned in 1910, when she

[40] 186 Fed. 150.

was rejected as a prostitute entering the country. In quoting with approval from the opinion of the court below, which found that when the petitioner entered in 1901 she was not a prostitute but that she was when she returned to this country, the court said: "There is no doubt the Secretary of Commerce and Labor would have the right to have her deported at any time within three years after her arrival if she had been brought here for immoral purposes, or was found within the same period in a house of prostitution. Therefore the only question to be determined in this case is, When does the three years begin to run? Both relator and respondent have recited a number of cases, none of which, however, is of controlling authority. In my opinion the law must be held to mean that the three year period within which an alien may be deported begins to run from the date of his first entrance into the country, and a temporary absence with the intention to return cannot interfere with his status as a resident nor give the immigration authorities the right to deport him." This is, in effect, to apply the principle enunciated in the Nakashima and Rodgers cases[41] to alien prostitutes who, prior to their visit abroad, have acquired rights of domicile securely vested in so far as the provisions of the Act of 1907 apply to such cases.

Although, for the reasons hereinbefore given, the decision appears to express the correct view, it is not in accord with the conclusion reached by the majority of the courts which have had occasion to pass upon the precise point in issue—the right to return of alien prostitutes who have remained here for three years without steps being taken for their expulsion in accordance with the provisions of section 3 of the Act of 1907 prior to its amendment.[42] But although, in these

[41] *Ante*, pp. 442, 449.

[42] United States v. Sprung, 187 Fed. 904; *Ex parte* Hoffman, 179 Fed. 839; *Ex parte* Petterson, 166 Fed. 536; United States v. Hook, 166 Fed. 1007; *Ex parte* Crawford, 165 Fed. 830.

cases, the question of the right of prostitutes to re-enter the county was involved, these courts have, as a rule, seemed disinclined to base their decisions on an interpretation of section 3 of the Act of 1907—dealing directly with the rights of prostitutes as a class—preferring to proceed on the broad ground that the excluding provisions of the Act of 1907 operate on all aliens, as opposed to alien immigrants, who, being outside the territorial limits of the United States, seek to come in. The language of the Circuit Court of Appeals for the Second Circuit relative to this point has already been adverted to.[43] That decision is specifically based on the doctrine first enumerated in the Taylor case;[44] and that is the ground generally taken by the courts of that circuit, whether passing on the right of alien prostitutes or of others to return to this country, or on questions germane thereto.[45]

As has been indicated in the preceding pages, the soundness of this view is open to serious question. A better ground for upholding these decisions would seem to be expressed in the decision in the Hook case, where the court expressed the opinion that to admit alien prostitutes on their return from abroad would be to bring the very mischief which the statute seeks to avoid. But the answer seems to be that the courts were left no discretion in the premises, and section 3, by limiting the period wherein the power of immigration officers to deport might be exercised, constituted an express declaration on the part of Congress that even alien prostitutes should acquire the right to maintain their domicile unmolested until the law-making power should otherwise provide. The question has, however, in so far as it relates only to the prostitute class, become academic since the

[43] *Ante*, p. 451.

[44] *Ante*, p. 427.

[45] United States v. Villet, 173 Fed. 500; United States *ex rel.* Ueberall v. Williams, 187 Fed. 470.

passage of the amending section of the Act of March 26, 1910.

D. THE ACQUISITION OF DOMICILE AS AFFECTED BY THE MINORITY OF THE ALIEN.

In the case of *Ex parte* Petterson[46] the facts were that the alien, when a girl of sixteen, landed in the United States in 1901, and resided here until 1906, when she left for a temporary visit abroad. Six months previous to her departure she had entered a house of prostitution. She returned in September, 1907, when she resumed her occupation as a prostitute, and shortly thereafter was arrested on the ground of being found unlawfully in this country. The court, although strongly inclined to base its decision on the doctrine of the Taylor case,[47] took the view that she could not establish a domicile here while a minor; that her minority depended, not on the laws of Minnesota where she lived, and which provided that women reach their majority at eighteen years of age, but upon the common law; and that a house of prostitution could not be a home; that since she became 21 on the first day of December, 1906, and left for abroad on December 2, 1906, she could not be taken to have acquired a domicile after reaching her majority; and that consequently her domicile was that of her parent in Sweden. No weight was given to the conceded fact that her departure was taken with the intention to return, and that she actually returned to this country in pursuance of that intention. The court was apparently of the opinion that in this case, at least, the petitioner could only have acquired a domicile by remaining in the country after her majority.

The question of the acquisition of domicile by an alien minor was considered in the late case of Redfern v. Halpert,[48] decided by the Circuit Court of Appeals for the

[46] 166 Fed. 536.
[47] *Ante*, p. 427.
[48] *Ante*, p. 468.

Fifth Circuit in 1911. The facts in that case have already been recited.[49] The court said: "It is contended by respondent that in the instant case, the relator having come to the United States as a minor child, could not be considered as having come here with the intention of acquiring a domicile, and, therefore, has no status as a resident. I cannot agree with this view of the case. It seems to me that no greater hardship could be occasioned than by deporting an alien who had come to this country at a tender age and lived until after majority. Deportation in such a case is tantamount to exile."

IV. Special Classes to Whom the Immigration Act Does Not Apply.

A. ALIEN SEAMEN.

Bona fide members of this class of foreigners have, from the earliest period in the history of the immigration acts, almost invariably been held not to be included within the excluding provisions of the law.[50] In the Taylor case[51] the court decided that a ship's captain from whose ship an alien seaman deserted while on shore leave, was subject to the penalties imposed by the Act of March 3, 1903, for failing to use due precautions to prevent aliens from landing in the country. This decision was necessarily based on the assumption that alien seamen were included within the excluding provisions of that act. But, as has been already shown,[52] the decision was reversed by the Supreme Court of the United States, in the case of Taylor v. United States.[53] In the words of the court: "It is necessary to commerce, as all admit, that sailors should go ashore, and no one believes that the statute intended altogether to pro-

[49] *Ante*, p. 468.

[50] United States v. Sandrey, 48 Fed. 550; United States v. Burke, 99 Fed. 895; 23 Op. Atty. Gen. 521, 1901.

[51] Taylor v. United States 152 Fed. 1, *ante*, p. 427.

[52] *Ante*, p. 428n.

[53] 207 U. S. 120, 52 Law Ed. 130.

hibit their doing so. The contrary has always been understood of the earlier acts, in judicial decisions and executive practice." And the act has been held inapplicable to sick seamen placed by their officers in hospitals on shore through inability to go home on the vessel which brought them to the United States.[54]

Alien "horsemen" signing at a foreign port for taking care of the horses on the vessel during the voyage, have been held to be "seamen" for the purpose of determining the application as to them of the immigration acts.[55] But the court held that, if discharged at the port of entry, they would be subject to inspection by the immigration officers as would any other alien coming within the operation of the act.

The mere fact that an alien arrives at a port of the United States as a member of a ship's crew does not mean that he is thereby exempt from the provisions of the immigration law. As the Supreme Court said in the Taylor case,[58] "Of course it is possible for a master unlawfully to permit an alien to land even if the alien is a sailor." The exemption of seafaring men from the operation of the act is predicated on the fact that they are what they represent themselves to be, *bona fide* seamen in the present exercise of their calling. Sailors are persons whose employment consists in following the sea; their presence in our ports is opposed to the idea that they enter them in order to take up a residence in this country, or for any other purpose except that of following their profession. Of course an alien who is a sailor may exercise the right of changing his residence to this country without involving the intention of giving up his occupation. But in such

[54]Niven v. United States, 169 Fed. 782.

[55]United States v. Atlantic Transport Co., 188 Fed. 42; as to right of alien "horsemen" domiciled in this country to return in spite of not having provided themselves with the certificate prescribed by Treasury Circular 135 issued in 1899, see 23 Op. Atty. 278, Oct. 1900.

[58]And see 23 Op. Atty. Gen. 521, 1901.

case he would be seeking admission to this country in the capacity of an immigrant and his right to enter for that purpose would be conditional on his freedom from such disabilities as operate to exclude. His presence here would not be that of a seaman engaged in the ordinary pursuits incident to his vocation.

Chinese Seamen.

Chinese seamen have generally been held to be exempt from the excluding provisions of the Chinese exclusion acts.[59] But in order to guard against abuses and to insure their reshipment a bond may be required;[60] and it has been held that where the giving of a bond is provided by the rules of the Department of Commerce and Labor, the right to enter is conditioned on furnishing the bond prescribed.[61] As in the case of aliens of other nationalities, the fact that a Chinese person arrives at a United States port as the member of a ship's crew does not render him exempt from exclusion under the Chinese exclusion acts, where the voyage was made with intent to gain admission to this country.[62]

B. ALIEN STOWAWAYS.

Alien stowaways have been held not to come within the operation of the immigration acts;[63] but it is obvious that the mere fact of being stowaways does not decide the question of exemption. No matter in what way or in what capacity the alien enters the ship at a foreign port, the question of his right to remain must depend on the capacity in which he seeks to remain. If it is his intention to take up a permanent abode here, or to remain even tem-

[59]United States v. Jamieson, 185 Fed. 165; *In re* Jam, 101 Fed. 989; United States v. Burke, 99 Fed. 895; *In re* Ah Kee, 22 Fed. 519; *In re* Mon Can, 14 Fed. 44; *In re* Ah Sing, 13 Fed. 286; *In re* Ah Sing, 1 U. S. District Court, Hawaii, 15.

[60]United States v. Ah Fook, 183 Fed. 33; *In re* Jam, 101 Fed. 989.

[61]United States v. Crouch, 185 Fed. 907.

[62]United States v. Graham, 164 Fed. 655.

[63]Cunard Steamship Co. v. Stranahan, 134 Fed. 318.

porarily in any capacity other than that of a sailor, he does not come within the terms of the Taylor decision.[64] But the fact that he entered the ship as a stowaway is of itself not sufficient under the law to subject him to inspection by the immigration officers, for there is nothing in the fact that he so entered to prevent him from assuming the status of a seaman.

In the case of United States v. Neil McDonald, decided by the Supreme Court in connection with the Taylor case,[65] there was an allegation in the indictment against the master that the alien was a stowaway under order of deportation. But, the court there stated that there is nothing in the fact that an alien has been refused leave to land from a British ship and has been ordered to be deported to make it impossible, as a matter of law, for the British master subsequently to accept him as a sailor on the high seas, even if bound for an American port.

C. Natives of the Insular Possessions

Porto Ricans, native inhabitants of the islands at the time of its cession by Spain to the United States, are not to be considered aliens in the meaning of the immigration act. In the case of Gonzales v. Williams,[66] the Supreme Court emphasized the fact that the question to be determined in deciding the point as to whether the immigration Act of March 3, 1891, applied to native Porto Ricans was not whether such persons were natives of the United States, but "the narrow one whether Gonzales was an alien within the meaning of that term as used in the act." In reaching the conclusion above stated the court said: "We think it clear that the act relates to foreigners as respects this country, to persons owing allegiance to a foreign government and citizen or subjects thereof; and that citizens of Porto Rico whose permanent allegiance is due to

[64] *Ante* p. 472.

[65] Taylor v. United States, 207 U. S. 120, 52 Law. Ed. 130.

[66] 192 U. S. 1, 48 Law Ed. 317.

the United States, who live in the peace of the dominion of the United States, the organic law of whose domicile was enacted by the United States, and is in force through officials sworn to support the Constitution of the United States are not 'aliens,' and upon their arrival by water at the ports of our mainland are not 'alien immigrants' within the intent and meaning of the Act of 1891."

For the same reasons it would appear that natives of the Philippines are not aliens within the meaning of the present law.[67]

[67] 22 Op. Atty. Gen. 495, 1899.

CHAPTER IV.

JUDICIAL REVIEW OF ADMINISTRATIVE DECISIONS.

I. In General.

A. ADMINISTRATIVE OFFICERS FINAL JUDGES ON QUESTIONS OF FACT.

II. Prior to the Act of August 18, 1894.

A. RIGHT OF JUDICIAL REVIEW.

B. MATTERS GOING TO THE JURISDICTION OF EXECUTIVE OFFICERS.

1. *Persons not within the operation of the Exclusion or Immigration Acts.*
2. *Acts in excess of Executive authority.*

III. After the passage of the Act of August 18, 1894.

A. RIGHT OF JUDICIAL REVIEW.

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C. FINALITY OF DEPARTMENTAL FINDINGS AS TO RIGHT TO ENTER.

1. *Extent of and to what applicable.*
2. *Favorable decisions not final.*
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4. *Necessity for fair hearing.*
   (A.) What constitutes a fair hearing.
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5. *Departmental finding must constitute bona fide "decision."*
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7. *Questions of fact.*
   (A.) Whether an alien an immigrant a question of fact.
   (B.) Whether Chinese belong to exempt classes a question of fact.
   (C.) Citizenship a question of fact or a mixed question of law and fact.
   (D.) Other questions of fact.

D. FINALITY OF DEPARTMENTAL FINDINGS AS TO THE RIGHT TO REMAIN.
E. SHOWING NECESSARY TO ENTITLE APPLICANT TO A JUDICIAL HEARING.

I. In General.

Section 2 of the Immigration Act of August 3, 1882,[1] charged the Secretary of the Treasury with the duty of executing the provisions thereof; and section 3 required him to establish such rules and regulations not inconsistent with the law as he might deem best calculated to protect the United States and the immigrants coming to the United States ports, and to carry out the provisions of the act. In the performance of these general duties the Secretary was empowered to enter into contracts with such state commission, board, or officers as might be designated for that purpose by the governor of any state.[2] This power, however, was withdrawn by the Act of March 3, 1891.[3]

The Chinese exclusion Act of 1882,[4] prohibiting the further immigration of Chinese laborers into the United States, and providing for the issuance of certificates the possession of which was to entitle those laborers already in the country to entry on return, and Chinese members of the exempted classes to entry, designated the collector of customs as the authority to pass on the right of those seeking admission. By section 8 of the Act of September

[1] 22 Stat. at L. p. 214.
[2] Section 2.
[3] 26 Stat. at L. p. 1084.
[4] 22 Stat. at L. p. 58.

13, 1888,[5] the Secretary of the Treasury was empowered to make, prescribe and amend such rules and regulations as he might deem necessary to secure and protect both the United States and all Chinese persons in those rights secured to them by the second and third articles of the treaty with China of 1880.[6] The authority and power with respect to the enforcement of the immigration and exclusion laws, theretofore vested in the Secretary of the Treasury, were transferred to the Secretary of Commerce and Labor by the Acts of February 14, 1903, and April 28, 1904.

Section 8 of the Act of March 3, 1891, provided that "all decisions made by the inspection officers or their assistants touching the right of any alien to land when adverse to such right shall be final unless appeal be taken to the Superintendent of Immigration whose action shall be subject to review by the Secretary of the Treasury." Section 5 of the Act of March 3, 1893, provided that every arriving alien immigrant who should not appear to the examining inspector to be clearly and beyond a doubt entitled to admission should be detained for special inquiry; that no immigrant should be admitted except after a favorable decision rendered by at least three out of four inspectors holding the inquiry; and that any decision to admit should be subject to appeal by any dissenting inspector to the Superintendent of Immigration, whose action should be subject to review by the Secretary of the Treasury.

Section 12 of the Chinese exclusion Act of September 13, 1888, provided that no Chinese passenger of a vessel entering a port of the United States should be allowed to land in violation of law; "and that the collector shall in person decide all questions in dispute with regard to the right of any Chinese passenger to enter the United States, and his decision shall be subject to review by the Secretary of the

[5] 25 Stat. at L. p. 476.
[6] *Ante*, p. 26.

Treasury and not otherwise." This section is, however, to be regarded as not binding on the courts.[7]

A. ADMINISTRATIVE OFFICERS FINAL JUDGES ON QUESTIONS OF FACT.

These provisions make it clear that in legislating regarding the right of aliens, Chinese or others, to enter the United States, it was the intention of Congress to submit all questions of fact on which the right to enter was based to the final determination of the officers who, by the provisions of the various statutes dealing with the subject, were to pass upon the evidence on which the right claimed was founded. The matter was thereby made one for administrative and not judicial decision.

The right of Congress so to do is incontestable. To quote the Supreme Court in the case of Ekiu v. United States:[8] "Congress may if it sees fit.....authorize the courts to investigate and ascertain the facts on which the right to land depends. But on the other hand, the final determination of those facts may be entrusted by Congress to executive officers; and in such a case as in all others in which a statute gives a discretionary power to an officer, to be exercised by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to re-examine or controvert the sufficiency of the evidence on which he acted."

It had been contended in the case of the United States v. Jung Ah Lung[9] that there was no jurisdiction in the United States District Court to issue a writ of *habeas corpus* on behalf of a Chinese person held in custody by order of the collector of customs for deportation under the Act of 1884. Said the court: "It is urged that the only restraint of the party was that he was not permitted to

[7] Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634.
[8] 142 U. S. 651; 35 Law Ed. 1147.
[9] 124 U. S. 621, 31 Law Ed. 591.

enter the United States..... The party was in custody. The return of the master was that he held him in custody by direction of the customs authorities of the port under the provisions of the Chinese restriction act. This was an act of Congress. He was, therefore, in custody under or by color of the authority of the United States within the meaning of section 753 of the Revised Statutes..... We see nothing in these acts which in any manner affects the jurisdiction of the courts of the United States to issue a writ of *habeas corpus.*" And the decision in the Ekiu case,[10] although holding that the courts could not be appealed to for passing on questions of fact, when the same had been entrusted by Congress to administrative officers, was equally firm in holding that "an alien immigrant prevented from landing by any such officer claiming authority to do so under an act of Congress, and thereby restrained of his liberty, is doubtless entitled to a writ of *habeas corpus* to ascertain whether the restraint is lawful."

To say, however, that on *habeas corpus* proceedings the court cannot inquire into the *facts* would be to put the proposition too broadly to be consistent with accuracy. The facts on which the court will not pass are only those facts the determination of which Congress has left with the administrative officers, to wit: the facts on which the claim of the alien is based. Thus it has been held that the office of *habeas corpus,* when invoked under the immigration or Chinese exclusion acts is to inquire into the jurisdiction exercised by administrative officers, or *quasi* judicial tribunals, such as those presided over by a United States commissioner, in order to determine whether such officer or tribunal has kept within his or its legal limits and proceeded according to law.[11]

The question of whether or not the decision of departmental officers is final and binding on the courts originates

[10]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146.
[11]*In re* Vito Rullo, 43 Fed. 62.

in the vast majority of cases with an administrative holding adverse to the right of the alien to enter this country. The immigration and exclusion acts do not provide that a favorable decision on the part of such officers is final, although those sections of the exclusion acts providing for a hearing before the United States commissioner where Chinese aliens claim to be entitled to remain in the United States have been construed by the courts to make the commissioner's favorable finding on the merits a final settlement of the question in dispute and as giving the Government no right of appeal;[12] but it must be a decision on the merits, or it is not final.[13]

The favorable decisions of executive officers, on the contrary, have no binding effect and are of no force as controlling adjudications.[14] Thus the fact that the board of special inquiry established under the present immigration Act of February 20, 1907, passes favorably on the right of aliens to admission does not exempt them from the operation of the three year probationary period during which they may be deported by the Secretary of Commerce and Labor if found by him to be unlawfully in the United States;[15] and consequently the Secretary has the right to order the board to institute a second hearing in such cases, although it may have unanimously decided only a month before that the alien is entitled to enter. Recourse to the writ in connection with proceedings instituted before United States commissioners under the Chinese exclusion acts will be considered in a subsequent chapter.[16]

[12]Leong Jun v. United States, 171 Fed. 413.

[13]*Ex parte* Leung Jun, 160 Fed. 251.

[14]*In re* Li Foon, 80 Fed. 881; *Ex parte* Stancampiano, 161 Fed. 164; Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.

[15]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029; and see 136 Fed. 734.

[16]Chapter on Deportation Procedure, *post*, p. 652. The appeal provided by law, and not an application for the writ is the proper remedy.

II. Prior to the Act of August 18, 1894.

A. RIGHT OF JUDICIAL REVIEW.

Prior to the passage of the Act of August 18, 1894,[17] the courts pursued the principle of non-interference with the decisions rendered by the proper officials as to the right of aliens to land in or enter the United States whenever the right of judicial review thus invoked would have included an examination of the facts on which the right of the petitioner to enter or land was based, or when it would have included a judicial determination of facts to ascertain how executive officers had performed the duty imposed on them by the acts. Thus the courts refused to interfere for the purpose of passing on the action of the collector of customs in refusing to issue the return certificate provided by the Acts of 1882 and 1884 to a Chinese laborer leaving the United States, the propriety of issuing such certificates having been left entirely to the discretion of that officer,[18] and steadily refused to exercise a supervisory control over the manner in which the collector performed his duty.[19] When the question was simply whether or not the finding of the collector was correct, and even when it appeared that the finding as to the facts was incorrect, when such incorrect finding was based on the untruthful statements of the petitioner, the courts refused to interfere.[20] The test was conceded to be whether or not, in denying a landing, the proper officers were acting within the jurisdiction vested in them by the law,[21] and their findings were held not subject to review as long as competent evidence of the facts on which it was their duty to pass was before them at the time of the excluding de-

[17] *Post*, p. 489.

[18] *In re* Kew Ock (Case of the Limited Tag), 21 Fed. 789.

[19] *In re* Ah Kee, 21 Fed. 701.

[20] *In re* Dietz, 40 Fed. 324.

[21] *In re* Day, 27 Fed. 678; *In re* Cummings, 32 Fed. 75; *In re* Vito Rulio, 43 Fed. 62; *In re* Chin Yuen Sing, 55 Fed. 571.

cision.[22] Thus, where the collector of customs under the Act of August 3, 1882,[23] had decided that the petitioners were not public charges, thereby reaching a different conclusion from that of the board of commissioners, the writ was dismissed on the ground that the former had no power to reverse the findings of the board, the latter being vested by law with jurisdiction to pass upon the status of immigrants to the exclusion of that of the collector.[24]

Nor does the decision of the Supreme Court in the Jung Ah Lung case[25] lay down principles in conflict with the generally accepted view. That was the case of a Chinese laborer who left the United States in 1883 after having procured the return certificate of identification required by that act. The collector sought to exclude him on the ground that he had neither presented the certificate issued under that act nor that required by the Act of 1884, passed in his absence, and that no other evidence of his right to enter was admissible under the provisions of the Act of 1884. The court held that the Act of 1884 had no application to him and that his rights were to be determined by the provisions of the Act of 1882, which did not provide that the certificate should be the only evidence of the right to return. It was, however, urged that the decision of the collector was exclusive, but the court said: "It is true that the ninth section of the act provides that before any Chinese passengers are landed.....the collector .....shall proceed to examine the passengers.....and that no passenger shall be allowed to land in the United States from such vessel in violation of law. But we regard this as only a provision for specifying the executive officer who is to perform the duties prescribed, and that no inference can be drawn from that or any other language

[22] *In re* Cummings, 32 Fed. 75; *In re* Chin Yuen Sing, 65 Fed. 571.
[23] 22 Stat. p. 214.
[24] *In re* Palagano, 38 Fed. 580.
[25] 124 U. S. 621, 31 Law Ed. 591.

in the acts that any judicial cognizance which would otherwise exist is intended to be interfered with."

The petition went in effect to the jurisdiction of the collector: no question as to the correctness or incorrectness of his findings was raised. The question was whether or not on the facts shown the petitioner was entitled as a matter of law to land under the acts. The jurisdiction of the collector was limited to cases of passengers landing "from such a vessel in violation of law;" and when the facts as found by the collector failed to show that the petitioner if landing, would be doing so in violation of the acts, it would necessarily follow that the collector would be without jurisdiction, and that the facts on which such lack of jurisdiction was based would be properly before the court on *habeas corpus*. But the writ was refused in the case of an alien immigrant who had been denied landing by an inspector of immigration, duly appointed under the Act of March 3, 1891, where such immigrant had failed to appeal from the excluding decision to the superintendent of immigration—the opportunity for such appeal being duly provided by section 8 of that act.[26]

B. MATTERS GOING TO THE JURISDICTION OF EXECUTIVE OFFICERS.

Whether or not the executive officers are acting within the limits of their jurisdiction depends primarily on two things—first, whether or not the person excluded is one who comes within the operation of the act or acts under which he is excluded, and second, whether or not the power under which he is excluded is that vested in the executive officers for the purpose of enforcing the act.

1. *Persons Not Within the Operation of the Exclusion or Immigration Acts.*

It was held in earlier cases that inasmuch as it was not the intention of Congress that the excluding provi-

[26]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1156.

sions of the Chinese exclusion acts should apply to persons of Chinese descent who were citizens of the United States, such persons when held for the purpose of deportation were entitled to their release on *habeas corpus;*[27] and it appears that any person alleging himself to be a citizen of the United States desiring to return to this country from a foreign land, and prevented from doing so by detention by the immigration authorities, who applied on that ground for a writ of *habeas corpus* was entitled to a hearing, and to a judicial determination of the facts alleged; and that no act of Congress could be understood to bar such hearing and judicial determination.[28]

So, too, with regard to Chinese persons who, though not alleging citizenship in the United States, gave proof to the customs authorities of other facts the existence of which was not deemed a bar to their exclusion under the Chinese exclusion acts; or with regard to other aliens determined not to be within the classes excludable under the immigration acts. Thus the writ was granted in the case of a Chinese merchant who at the time of the passage of the Act of 1882 was domiciled in Peru, and could have had no opportunity of obtaining a certificate of identity under that act,[29] or where it appeared that the petitioner was a Chinese laborer domiciled in the United States who left the country prior to the Act of 1882 or 1884 and could not, therefore, produce the required certificate on his return.[30] Similarly where it was proven that the petitioner had never left the United States, but had traveled from one port thereof to another by vessel, as in such case no certificate of return was required by the act;[31] and finally

[27] *Ex parte* Chin King, 35 Fed. 354; *In re* Yung Sing Hee, 36 Fed. 437.

[28] Gee Fook Sing v. United States, 49 Fed. 146. Decisions under the later acts show them to have been based on a fallacy, at least so far as they sought to make of *citizenship* a peculiarly high question of fact.

[29] Case of the Chinese merchant, 13 Fed. 605.

[30] *In re* Chin A On, 18 Fed. 506; United States v. Jung Ah Lung, 124 U S. 621.

[31] *In re* Tong Wah Sick, 36 Fed. 440.

release on the writ was held to be the proper course where it appeared that the petitioners were alien residents of the United States returning to this country from a trip abroad, and were held for deportation on the ground of being alien immigrants under the Act of 1885, as the act was consistently held to apply only to aliens coming to this country for the first time to establish their domicile here, and not to aliens who, having established that domicile left it temporarily *animo revertendi;*[32] but the decision of the Secretary of the Treasury to the effect that the petitioner was an immigrant presented a finding of fact with which the courts refused to interfere.[33] Relief was held proper where the petitioner was a Chinese merchant domiciled in the United States for seventeen years, who left after obtaining proofs of identity from the collector of the port, and was held for deportation on his return from a business trip to China for failure to obtain the certificate of identity from the Chinese government required from Chinese merchants coming to the United States for the first time; those acts containing no provision whatsoever rendering it obligatory on such persons to obtain certificates when returning to the United States.[34] Again, it was held that a Chinese girl, the bride of a Chinese person then in the United States, refused admission and held for deportation, properly seeks relief in *habeas corpus* when it appears that the marriage was solemnized in good faith, although the groom was in the United States at the time the ceremony was performed in China; as the treaty with China and the provisions of the exclusion acts were held not to exclude from admission to the United States the wives or children of Chinese persons belonging to the exempt classes designated therein.[35] And where a Chinese person was held for deportation on

[32] *In re* Panzara, 51 Fed. 275; *In re* Bucciarello *et al.*, 45 Fed. 463.

[33] *In re* Howard, 63 Fed. 263.

[34] Lau Ow Bew v. United States, 144 U. S. 47.

[35] *In re* Lim Lim Ying, 59 Fed. 682.

the ground that he was a Chinese laborer who had failed to register according to the Act of 1893, he was discharged on *habeas corpus* proceedings on the ground that the evidence produced by him in deportation proceedings was sufficient to establish his status as a merchant, and that as such he was not subject to deportation under that act for failure to register.[36] The reason for granting the relief in *habeas corpus* in the class of cases last cited is clear: The fact of detention under color of authority of the United States for purposes of deportation under the Chinese exclusion and immigration acts of aliens who it was not the purpose of Congress to exclude, and the consequent lack of jurisdiction in the departmental officers to exclude or expel.

2. *Acts in Excess of Executive Authority.*

The second general ground for affording relief as stated[37] is where the facts which the courts are requested to review show that executive officers have exceeded the powers vested in them by statute through adopting methods of exclusion not provided by or justifiable under the acts themselves. Thus, on a writ of *habeas corpus* brought by an immigrant held for deportation under the Act of August 3, 1882, the court, after inquiring into the cause of detention, found it proper to ascertain whether or not the board of inquiry acted within its powers; and release on the writ was held proper where, under the same act, the petitioners were held for deportation in the absence of any examination by the board;[38] and the power of the courts to review was held to be limited to an examination as to whether or not the proceedings of the immigration authorities were fair and regular.[39] And similarly under

[36]The proper procedure in cases coming before United States Commissioners under that Act is by appeal, and not by writ of *habeas corpus.*

[37]*Ante,* p. 485.

[38]*In re* Braemadfar, 37 Fed. 774.

[39]*In re* Dietz, 40 Fed. 324.

the Act of March 3, 1891, where it appeared that the petitioner had been refused the privilege of the special inquiry provided under section 1 of that act, and was thereupon detained for deportation, the court ordered his release on *habeas corpus*.[40]

III. After the Passage of the Act of August 18, 1894.

A. RIGHT OF JUDICIAL REVIEW.

On August 18, 1894, Congress passed the Sundry Civil Appropriation Act appropriating $100,000 under the subtitle "Enforcement of alien laws," and $50,000 under the subtitle "Enforcement of the Chinese exclusion act," immediately following the former. The closing paragraph of the latter reads as follows: "In every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien shall be final unless reversed on appeal to the Secretary of the Treasury." By the Acts of February 14, 1903, and April 28, 1904, the jurisdiction of the Treasury Department in these matters was transferred to the Department of Commerce and Labor.

At the time of the passage of this act the Chinese exclusion Acts of 1882 and 1884, and October 1, 1888, were in force. As regards the Act of September 13, 1888, "while sections 1 to 4 and section 15 never took effect because the treaty upon which they were dependent was not ratified, the remainder of the act was not dependent on the treaty, and has a field of operation as existing law." [41] And it was held in 1892 that the act became law from the date of its approval with the exception of sections 2, 4, and 15, but that while the law existed at that time, in the

[40] *In re* Feinknopf, 47 Fed. 447.

[41] 23 Opinions Atty. Genl. 621, 1902.

[42] United States v. Long Hop, 55 Fed. 58,

absence of the ratification of the treaty there was no field of operation for those sections.[42] Even in 1901 the matter of the force of those provisions which were not dependent on the treaty involved considerable doubt. Says the Supreme Court in the case of Li Sing v. United States:[43] "Without finding it necessary to say that there are no provisions in the Act of September 13, 1888, which from their nature are binding on the courts as existing statements of the legislative will, we are willing to hold that section 12 of that act cannot be so regarded."[44]

Moreover, at the time of the passage of the Sundry Civil Appropriation Act of August 18, 1894, the Acts of March 3, 1891, and March 3, 1893, amending and facilitating the enforcement of the various acts relating to the immigration and importation of aliens, were in full force and effect.

Prior to the Act of August 18, 1894, in one instance only had Congress provided that the decision of executive officers should be final as to the right of aliens to be admitted to the United States. This was section 8 of the Act of March 3, 1891, to the effect that all decisions of inspection officers touching that right should be final "unless appeal be taken to the Superintendent of Immigration, whose action shall be subject to review by the Secretary of the Treasury." There it was the failure on the part of the alien to take the appeal that made the decision final, True, section 12, of the Act of September 13, 1888, provided that the collector in person should decide all questions in dispute as to the right of Chinese persons to land, and that his decision should be subject to review by the Secretary of the Treasury but not otherwise. But, as above stated,[45] section 12 was held by the Supreme Court not to be binding on the courts. The Act of 1894 com-

[43]180 U. S. 486, 45 Law Ed. 634.

[44]Section 5 to 14 excepting Section 12 were, in order to dispel any further doubts on the question, re-enacted by the Acts of 1902, and 1904.

[45]*Supra.*

mitted the decision of the right of entry to officers of the executive department for final determination,[46] and in spite of determined attacks made upon it in the courts, its constitutionality was upheld on the ground that Congress could entrust the executive department with the exclusion determination of the right of aliens to enter the United States; that it had expressed its will in this instance, and had made the decision of the Secretary of the Treasury the final expression of the governmental intent in these cases.[47]

Administrative Decisions May Not Be Arbitrary.

Still, in spite of the positive and comprehensive terms of the statute they cannot be construed to vest executive officers with arbitrary power. There is the law itself, which defines the method in which the right to enter is to be determined. If determined in accordance with the method prescribed by Congress, harsh as those methods may be, the existence of the right has none the less been decided lawfully, and the alien excluded cannot be heard to say that he has been excluded without due process of law; but to constitute due process of law as understood at the time of the Constitution he cannot be detained for deportation without having had, at some time an opportunity to be heard upon his right to enter;[48] also he must, in order that the executive decision be final, be *an alien seeking admission to the United States under some law or treaty of the United States;* otherwise he is not within

[46]Lem Moon Sing v. United States, 158 U. S. 539, 39 Law Ed. 1082.

[47]Lem Moon Sing v. United States, 158 U. S. 539; 39 Law Ed. 1082; United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917; United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; Lee Lung v. Patterson, 186 U. S. 168, 46 Law Ed. 1108; United States v. Watchorn, 164 Fed. 152; *ex parte* Stancampiano, 161 Fed. 164; *In re* Gayde, 113 Fed. 588, and same 112 Fed. 416; *In re* Way Tai, 96 Fed. 484; United States v. Jin Fung, 100 Fed. 389; *In re* Moses, 83 Fed. 995; United States v. Wong Chow, 108 Fed. 376; *In re* Leong Youk Tong, 90 Fed. 648.

[48]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

the purview of the statute, and the excluding decision, far from being final, would be null and void, inasmuch as it is only under some law or treaty that the Secretary has jurisdiction to pass upon his case. How far the right of an alien to a hearing in *habeas corpus* proceedings has been restricted by the Act of 1894, and to what extent the court will, in view of this legislation, review the decisions of the executive department, will be considered in the following pages.

Effect of the Act of 1894 on the Right of Judicial Review.

The question of jurisdiction and of whether or not, in passing on any given case, the methods designated and intended by Congress to be pursued are in fact employed to-day, is, as it was before the passage of the Act of 1894, the only real issue which justifies the courts in reviewing administrative decisions rendered under the Chinese exclusion and immigration acts. How, then, it may be asked, does the passage of that act either restrict the courts in their power of review or make the decisions of administrative officers more binding on the judiciary than they were prior to the passage of the act? The distinction may be said to be this:

Before the Act of 1894 was passed whenever the courts refused to exercise the right of review it was merely on the broad ground that all discretion having been granted to executive officers by the provisions of the preceding acts to pass on the facts on which the right to enter was based, Congress had shown that it was its intention that as to those facts the decision of the executive officers should be final; but that, if the claim was made that, over and above the officer's finding of fact, the applicant was entitled to enter under any law or treaty, the courts would pass on whether or not he was entitled to enter under such law or treaty. The decision of those officers as to the right of foreigners to enter under any law or treaty not being made final by any Congressional legislation to that effect,

there could be no obstacle to its review by the courts on *habeas corpus* proceedings.[49]

But after the passage of the Act of 1894, a different condition was created. Under the earlier acts the facts as found by the officer were not subject to review because of a generally recognized legal principle applicable to the existence in such officer of a delegated authority to pass on those facts; but where it was contended that an alien was deprived of treaty rights by being excluded, the courts would exercise their power of examining into that particular question. This power the Act of 1894 took away. As said in the Lem Moon Sing case,[50] where the writ of *habeas corpus* was refused a Chinese person who, in spite of his assertion that he was a returning Chinese merchant lawfully domiciled in the United States, had been refused admission to the United States: "The contention is that while, generally speaking, immigration officers have jurisdiction under the statute to exclude an alien who is not entitled under some statute or treaty to come to the United States; yet if the alien is entitled, of right, by some law or treaty, to enter this country, but is nevertheless excluded by such officers, the latter exceed their jurisdiction; and their illegal action, if it results in restraining the alien of his liberty, presents a judicial question for the decision of which the courts may intervene upon a writ of *habeas corpus*." The court goes on to say that if this contention is correct the provision that the administrative decision should be final would be nullified and of no practical effect. The question of whether or not an alien was entitled to enter under some law or treaty on which the Supreme Court had, prior to August 18, 1894, so frequently passed, was no longer open to judicial consid-

[49]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; Lau Ow Bew, petitioner, 141 U. S. 583, 35 Law Ed. 868; Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503; United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591; Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770.

[50]Lem Moon Sing v. United States, 158 U. S. 539, 39 Law Ed. 1082.

eration. As stated in this case, the effect of the Act of 1894 was to commit to executive officers "exclusive authority to determine whether a particular alien seeking admission into this country belongs to the class entitled by some law or treaty to come into the country or to a class forbidden to enter the United States." In distinguishing between this case and that of Lau Ow Bew v. United States[51] the Court said:

"Now the difference between that case and the present one is that, by the statutes in force when the former was decided the action of executive officers charged with the duty of enforcing the Chinese Exclusion Act of 1882 as amended in 1884, could be reached and controlled by the Courts when necessary for the protection of rights given or secured by some statute or treaty relating to Chinese. But by the Act of 1894, the decision of the appropriate immigration or customs officers excluding an alien 'from admission to the United States under any law or treaty' is made final in every case, unless, on appeal to the Secretary of the Treasury it be reversed,.....If the Act of 1894 had done nothing more than appropriate money to enforce the Chinese Exclusion act, the Courts would have been authorized to protect any right the appellant had to enter the country, if he was of the class entitled to admission under existing laws or treaties and was improperly excluded. But when Congress went further.....(by passing the Act of 1894).....the authority of the Courts to review the decision of the executive officers was taken away."[52] Where it appears that the person excluded is an alien, that he was seeking admission under and was excluded under a law or treaty of the United States, and that the excluding decision is not reversed on appeal, these facts taken together, would seem to constitute those elements creating a condition into which the Courts cannot intrude. Conversely it seems that the absence of any one

[51]Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.
[52]158 U. S. 539, 39 Law Ed. 1082.

of these elements would deprive an administrative decision rendered under those conditions of the shield of finality thrown about it by the statute.

It is not to be considered, however, that Congress has provided that the decisions of executive officers only need to be rendered in order to be final. The decision of the Supreme Court in the Japanese Immigrant case[53] which went as far as any other rendered by that tribunal in upholding the constitutionality of the Act of 1894 and in adhering to the strict principles of non-interference by the Courts with decisions rendered by administrative officers entrusted with the execution of the Chinese and Immigration Acts, contains the following statement:

"But this Court has never held, nor must we now be understood as holding, that administrative officers, when executing the provisions of a statute involving the liberty of persons may disregard the fundamental principles that inhere in "due process of law" as understood at the time of the adoption of the Constitution. One of these principles is that no person shall be deprived of his liberty without opportunity, at some time, to be heard... Therefore, it is not competent for the Secretary of the Treasury or any executive officer at any time within the year limited by the statute arbitrarily to cause an alien who has entered the country and has been subject in all respects to its jurisdiction, and a part of its population, although alleged to be illegally here, to be taken into custody and deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized."

B. MATTERS GOING TO THE JURISDICTION OF EXECUTIVE OFFICERS.

As before stated[54] the jurisdiction of departmental of-

[53] Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.
[54] *Ante*, p. 491.

ficers is complete under the Act of August 18, 1894, when the person before them is an alien and attempting to enter under any law or treaty of the United States. As will be seen,[55] when the question of whether or not he is an alien or a citizen depends absolutely on the facts found by the executive officer, the latter's decision is final as to such alienage or citizenship. Such decision is not final however, if the person found to be an alien is not found to be seeking admission to the United States under any law or treaty; in other words if the law or treaty under which the power to exclude is exercised does not include within its operation the alien excluded in a particular case. Whether a person seeking admission into this country is a citizen or a foreigner is a question of fact[56] for administrative officers to determine insofar as the applicant's political status can be correctly determined by reference to facts alone; whether if found to be an alien he is as such, subject to the operation of a law or treaty regarding his right to admission, is a question of law.[57] But it must always be borne in mind that while the facts from which executive officers may deduce the resulting political status of alienage or citizenship cannot be disturbed by the Courts they may pass upon the point as to whether or not the deduction of law based on such fact is correct.[58]

1. *Mere Allegation of Citizenship Insufficient to give Courts Jurisdiction.*

Before passing to an examination of what, in the light of judicial determination, is a test of a fair hearing, or of the circumstances under which the Courts will review administrative decisions, it will be well to consider how the Courts have interpreted the Act of 1894 with particular regard to its application to cases where the alien seeking

[55] *Post*, p. 534.

[56] Lem Moon Sing v. United States, 158 U. S. 534, 39 Law Ed. 1082.

[57] Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

[58] United States v. Wong Kim Ark, 169 U. S. 649, 42 Law Ed. 890.

to enter the United States has sought to avoid its operation by the claim that he is an American citizen. Attention has already been called to the fact that the mere allegation of United States citizenship on the part of a person excluded from admission to this country and detained for deportation was sufficient to grant him a hearing in habeas corpus.[59] The question was first presented to the Supreme Court in the case of Chin Bak Kan v. United States,[60] decided in 1902. The petitioner was a person of Chinese descent arrested on the ground of being unlawfully in the United States, and brought before a United States commissioner in deportation proceedings. It was claimed that the Commissioner had no jurisdiction because the basis of the right to remain was alleged to be the United States citizenship of the party arrested, and that by law the "obligation to prove the right to remain before the commissioner rested in Chinese persons only." But the Court held that the right on which such a claim is rested must be made to appear, and that "the inestimable heritage of citizenship is not to be conceded to those who seek to avail themselves of it under a pressure of a particular exigency without being able to show that it was ever possessed." Further, the Court laid particular stress on the fact that the United States Commissioner was a quasi-judicial officer and that he acts judicially in such proceedings. It is also to be noted that under the procedure prescribed the law gives the right to appeal, the effect of which is to create a hearing de novo before the Court reviewing the proceedings held before the Commissioner, and full opportunity to prove the fact of citizenship before a court of the United States. The application for the writ was denied.

[59]Gee Fook Sing v. United States, 49 Fed. 146.
[60]186 U. S. 193, 46 Law Ed. 1121.

(A.) When the writ is Applied for before Administrative Appeal is taken.

In deciding the case of the United States v. Sing Tuck[61] the Supreme Court had before it the question as to whether or not Chinese persons seeking admission into the United States, who, on being interrogated as to their right to enter, stated that they were American citizens and then stood mute, and were then found not entitled to enter,—from which finding they took no appeal from the inspector in charge at the port of application—were entitled, on being detained for deportation, to their discharge on a writ of habeas corpus. It was argued, that, by the construction of the Act of 1894 the fact of citizenship went to the jurisdiction of the immigration officers, and that the statute did not purport to apply to one who was a citizen in fact. But the Court said, "We shall not argue the meaning of the act. That must be taken to be established. As to whether or not the act could make the decision of an executive officer final upon the fact of citizenship, we leave the question where we find it. Whatever may be the law on that point the decisions just cited are enough to show that it is too late to contend that the act is void as a whole..... In order to act at all the executive officer must decide on the question of citizenship. If his jurisdicton is subject to being upset still it is necessary that he proceed if he decides that it exists. An appeal is provided by the statute. The first mode of attacking his decision is taking that appeal. If the appeal fails it is then time enough to consider whether upon a petition showing reasonable cause, there ought to be a further trial upon habeas corpus."[62]

[61]194 U. S. 161, 48 Law Ed. 917.

[62]And see re Koon Ko and re Koon Heen, 3 U. S. Dct. Hawaii, p. 623; and see Jao Igco v. Shuster, 10 Phil. Rep. 448; Lun Jao Lu v. McCoy, 10 Phil. Rep. 641.

(B.) Where the writ is Applied for after Administrative Appeal is taken.

In the case of United States v. Ju Toy,[63] the question was squarely raised of whether or not the allegation of American citizenship on the part of Chinese persons refused admission to the United States by the Immigration authorities and again denied the right to enter on appeal to the Secretary of Commerce and Labor sufficed to take the case from the hands of departmental officers and into the jurisdiction of the courts on habeas corpus. The case of the petitioner appeared to be peculiarly strengthened by the fact that a United States District Court had granted the writ, and on hearing the evidence adduced the judge found the petitioner to be a native born citizen of the United States. He alleged only the fact of citizenship, and the petition was silent as to the existence of any abuse of authority on the part of the executive officers or the absence of a fair hearing. In denying the writ the Court said: "It is established, as we have said, that the Act of 1894 purports to make the decision of the Department final, whatever the ground on which the right to enter the country is claimed,—as well when it is citizenship as when it is domicile, and the belonging to a class excepted from the Exclusion Acts. It is also established by the former case (United States v. Sing Tuck) and others which it cites that the relevant portion of the Act of August 18, 1894, Chapter 301, is not void as a whole. The statute has been upheld and enforced. But the relevant portion being a single section, accomplishing all its results by the same general words must be valid as to all that it embraces, or altogether void. An exception of a class constitutionally exempted cannot be read into those general words merely for the purpose of saving what remains. That has been decided over and over again (citing cases). It necessarily

[63] 198 U. S. 253, 49 Law Ed. 1040.

follows that when such words are sustained they are sustained to their full extent."

Certain observations made by the Court both in the Sing Tuck and Ju Toy cases have served perhaps to create an erroneous impression as to that court's attitude concerning the right of immigration officers to arrest and detain citizens of the United States seeking to enter this country. In the former case it is said that "the detention during the time necessary for investigation was not unlawful even if all the parties were not attempting to upset the inspection machinery by a transparent device;" and in the Ju Toy case: "if for the purpose of argument we assume that the Fifth Amendment applies to him (the petitioner) and that to deny entrance to a citizen is to deprive him of liberty, we nevertheless are of the opinion that in regard to him, due process of law does not require a judicial trial." But these remarks, aside from being purely dicta, cannot be held as laying down the proposition that under the Chinese and Immigration Acts taken in connection with the Act of 1894, the decisions of executive officers denying admission to citizens of the United States are final and binding on the courts. What the Supreme Court does hold unqualifiedly is that the mere assertion of citizenship by persons excluded under any law or treaty of the United States is insufficient on which to base the claim for a judicial hearing to which, as American citizens, they would be entitled; and this holding certainly finds support in the decision rendered in the Chin Bak Kan case[64] inasmuch as the relief sought in that case in habeas corpus was refused on the ground that petitioner had failed to prove himself what he had asserted himself to be, a citizen of the United States. It seems indisputable, as stated in the dissenting opinion in both the Sing Tuck and Ju Toy cases, that not only do the statutes of the United States expressly limit the finality of the determi-

[64] 186 U. S. 193, 46 Law Ed. 1121.

nation of the immigration officers to the case of aliens, but the rules of the Department are to the same effect. But it seems idle to speak of limiting the jurisdiction of such officers to cases of aliens in the absence of some rule whereby it may be determined who are aliens and who are not. The question of whether a Chinese person is a citizen of the United States is dependent on one fact only: that of his birth in the United States; and unless the fact is proven who shall say that in excluding such a person under the Act of 1894 the provisions of the statute have been invoked for the purpose of banishing a citizen of the United States? The only forum provided by law for ascertaining that fact is the Department of Commerce and Labor; and, therefore, the claim of citizenship, if not proven in that forum, cannot, for political purposes at least, insofar as the right to enter under the Chinese exclusion laws is based thereon, be said to exist. Whether or not Congress acted wisely in restricting a person alleging United States citizenship to so limited a forum may well be considered a matter of grave doubt; but, admitting that by passing the Act of 1894 Congress has done so—and such is undoubtedly the law to-day—there seems to be no justification for the assertion that Congress has authorized "the banishment of American citizens" at the discretion of the Secretary of Commerce and Labor without the right of appeal to the courts.

As the result of these cases it is settled law that the mere allegation of citizenship by one excluded from entry under the exclusion and immigration acts does not go to the jurisdiction of executive officers. But the fact of citizenship once proven in the mode provided for such proof by the statute necessarily goes to that jurisdiction. This was decided by the Supreme Court in the case of United States v. Wong Kim Ark[65] where the departmental officers found that the applicant, a person of Chinese descent, was

[65] 169 U. S. 649, 42 Law Ed. 890.

born in the United States. There the only issue was as to whether birth in this country made the applicant an American citizen, and the court held that it did. There was no dispute as to the facts.

2. *Aliens Not Subject to the Operation of the Immigration Laws.*

With the passage of the Act of 1894, the principle that the decision of executive officers rendered under conditions set out in that act were final and binding on the judiciary, was universally accepted by the courts.[66] But it was also recognized that the decisions of immigration officers were not final when based on a finding of fact which showed that the aliens excluded were not members of a class upon which the acts under the color of which they were refused admission were intended to be operative.[67]

(A.) Domiciled Aliens Returning to the United States.

Prior to the Act of March 3, 1903, the immigration acts had been almost invariably held to include within their operation—aside from certain classes of aliens whose entrance was specially prohibited—only alien immigrants, or persons coming to the United States for the first time for the purpose of establishing their domicile in this country. It had been held in 1895 that the "entire body

[66]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 421; Fok Young Yo v. United States, 185 U. S. 306, 46 Law Ed. 917; Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Lem Moon Sing v. United States, 158 U. S. 539, 39 Law Ed. 1082; United States v. Watchorn, 164 Fed. 152; *Ex parte,* Stancampiano, 161 Fed. 164; *Ex parte,* Lung Wing Wun, 161 Fed. 211; United States v. Wong Soo Bow, 112 Fed. 416; United States v. Wong Chow, 108 Fed. 376; United States v. Gin Fung, 100 Fed. 389; *in re* Way Tai, 96 Fed. 484; *in re* Leong Wouk Tong, 90 Fed. 648; *in re* Moses, 83 Fed. 995; *in re* Chin Yeun Sing, 65 Fed. 571.

[67]As where there is an agreed finding of facts that the children of domiciled aliens born in the United States are held for deportation (*in re* Giovanna, 93 Fed. 659) or where Chinese minors are found to be the adopted children of a Chinese merchant domiciled in the United States (ex parte Fong Yim, 134 Fed. 938); and see 160 Fed. 1014 and 176 Fed. 478.

of statute law touching the exclusion of contract laborers shows that it is directed solely against alien immigrants, not against alien residents, when returning after a temporary absence;" [68] and this view was generally adopted by the Federal courts both before and after the rendering of the decision just quoted up to the passage of the Act of March 3, 1903.[69] In the decision from which the quotation is taken it was held that when it appeared that the relator, an unmarried man, came to this country with the intention of making it his permanent abode, remained here about two years, and then left for his native country with the intention of returning might, if detained by order of the immigration authorities on such return, claim his right to be discharged on *habeas corpus*. Later decisions rendered under the Acts of 1891 and 1893 sustained this holding, asserting that the courts had jurisdiction to pass on the question of whether or not the petitioner was an alien immigrant.[70]

By the Act of March 3, 1903, the term "alien immigrants" as used in the preceding acts, was in certain sections discarded, and the word "aliens" substituted therefor. The significance of this change has been discussed at length in an earlier chapter.[71] Its significance for the purposes of the point at present under discussion amounts to this: If the word "immigrants" was deliberately omitted from the Act of 1903, for the purpose of extending the scope of that act to all aliens entering the United States irrespective of whether or not they might be returning to resume a domicile already lawfully established, the effect would be to vest executive officers with jurisdiction over a certain class of aliens—those who were found on examination to have already acquired a domicile in this

[68] *In re* Maiola, 67 Fed. 114.

[69] *In re* Panzara, 51 Fed. 275; *in re* Martorelli, 63 Fed. 437; *in re* Ota, 96 Fed. 487.

[70] *In re* Di Simone, 108 Fed. 942; but reversed on confession of error.

[71] Chapter on Status, *ante*, p. 434 *et seq.*

country, and to be returning for the purpose of continuing to maintain the same—which, by a practically unbroken line of judicial decisions, such officers had been held not to exercise.

Under the Act of 1903, various judicial opinions, conflicting as to the finality of executive decisions, were rendered by the Federal courts. On the one hand (and citing as authority the case of Lem Moon Sing v. United States) it was held that the Act of 1903 applied to "all aliens;" [72] on the other, it was asserted that the change of terminology from "alien immigrants" to "aliens" could not be construed to have this effect and that the courts had the right of review in such cases.[73] The conflict in judicial opinion on this point is still apparent in decisions rendered under the present act, although in section 25 thereof the word "aliens" used in the Act of 1903 has been discarded and the term "immigrants" substituted therefor.[74]

But conceding that the term "aliens" as used in section 2 of the present act, wherein are designated the classes of aliens excluded from admission—and, it may be noted, as used in section 2 of the preceding act, and in the corresponding section of the Act of March 3, 1891, which had been steadily held to apply only to alien immigrants—means "all aliens," still the question remains unsolved as to whether or not the act is to be considered confined in its operation to all aliens seeking "admission" or is meant to include all aliens who, after having once been "admitted" depart temporarily and then return.

Attention has been called to the fact that the Lem Moon Sing case has been cited in support of the view that the

[72] Taylor v. United States, 152 Fed. 1.

[73] United States v. Nakashima, 160 Fed. 842; United States v. Altman, 143 Fed. 922; *in re* Buchsbaum, 142 Fed. 221; Rodgers v. United States, 152 Fed. 346; Redfern v. Halpert, 186 Fed. 150.

[74] United States v. Williams, 187 Fed. 470; *in re* Hoffman, 179 Fed. 839; *ex parte* Koerner, 176 Fed. 478; United States v. Villet, 173 Fed. 500; United States v. Hook, 166 Fed. 1007; *ex parte* Petterson, 166 Fed. 536; *ex parte* Crawford, 165 Fed. 830; United States v. Watchorn, 164 Fed. 152.

excluding provisions of the present act and the Act of 1903 apply to aliens domiciled in this country as well as those seeking admission here for the first time. It is true that in that case the Act of 1894 makes the decision of departmental officers final in excluding an alien from "admission" to the United States, and that the Supreme Court upheld the application of the act to the case of a person claiming to be a Chinese merchant returning to the United States. It must be borne in mind, however, that the reason why the applicant was refused admission by the collector of customs was simply because the collector had not found as a fact that he was a returning merchant. Had this been the result of the administrative finding—in other words had the applicant proved his mercantile status in accordance with the provisions of the acts under which he sought to enter—he would have been permitted to enter as a matter of right. The principle for which the applicant contended was that having acquired a domicile in this country his right to retain it could not be lawfully made to depend on the decision of an executive officer; but the court held that the mere fact of such acquisition of domicile by a foreigner could not render him immune from the operation of municipal legislation enacted subsequently to his acquisition of such domicile and which specifically included him in its operation. In relying on the Lem Moon Sing case those courts which have done so seem to have overlooked the fact that the right of the applicant to return in that case could only be claimed under some law or treaty of the United States; whereas the right of domiciled aliens of other nationalities to return had never, until the passage of the Act of March 3, 1903, been held by the courts to depend on any law or treaty whatsoever. At the time of the passage of the Act of August 18, 1894, no one would have claimed that the right of domiciled aliens other than Chinese to return to the United States was dependent for its exercise upon some law or treaty of the United

States. The right of such aliens to retain their domicile was, under the universally recognized rule of international law the necessary consequence of having been allowed by this Government to acquire it. And it would seem that had Congress in the just exercise of its sovereign powers seen fit to revoke that right by municipal legislation, it would have done so in an unmistakable manner; and the fact that in selecting the terms by which to designate in the second section of the Acts of 1903 and 1907 those aliens who should be subject to the excluding provisions thereof it repeated word for word the term used in the corresponding section of the Act of March 3, 1891, which had never been held to apply to returning domiciled aliens, is of itself an indication that the rights hitherto enjoyed by them under earlier acts were to remain undisturbed.

(B.) Citizens of the Insular Possessions.

In the case of Gonzales v. Williams,[75] the petitioner in *habeas corpus,* an unmarried woman and a native of Porto Rico residing there on April 11, 1899, the date of the ratification of the Treaty of Paris whereby Porto Rico was ceded to the United States, on seeking admission to this country was denied entry on the ground that she was an alien and subject to exclusion under the Immigration Act of March 3, 1891. The Government contended that by virtue of the provisions of that act and of the Act of August 18, 1894, the decisions of the departmental officers was final; further, that not having been found to be a citizen of the United States, she must necessarily be an alien, and, therefore, within the departmental jurisdiction. But the court held that the question in the case was not whether she was a citizen of the United States, but whether she was an alien within the intent of the immigration statute, and that the courts were not bound by the deci-

[75] 192 U. S. 1, 48 Law Ed. 317.

sions of the executive officers in such a case as this, thereby denying the application thereto of the Act of 1894. There was no dispute as to the fact; the only question was the question of law as to whether or not a citizen of Porto Rico comes within the operation of the immigration acts, which, being decided in the negative, all questions of fact were held to become immaterial. The court accordingly granted the writ. The same result would necessarily follow were such an appeal presented by a citizen of the Philippine Islands or of Hawaii.

(C.) Alien Seamen.

Foreign seamen in the *bona fide* exercise of their calling have been consistently held by the courts not to come within the excluding provisions of either the immigration or the Chinese exclusion laws. In construing the Act of March, 1903, MR. JUSTICE HOLMES pointed out that the act has no application to foreign sailors carried to an American port with a *bona fide* intent to take them out again when the ship goes on, since it is necessary to commerce that sailors should go ashore in the ordinary pursuits of their calling, and that it would be unreasonable to believe that the statute altogether intended to prohibit their doing so.[76]

3. *When Applicant's Status Has Already Been Definitely Decided by Competent Authority.*

While the jurisdiction of departmental officers to finally pass on the facts on which the right of aliens seeking admission is based cannot be questioned, those facts may reveal causes other than those consisting in the failure of the statute to apply to a given case, which will justify the court in affording relief in *habeas corpus*. Thus, when the facts below show that a Chinese alien seeking admission into the United States has received a judgment of dis-

[76]Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

charge on the merits from a United States commissioner, that discharge is as binding on the Secretary of Commerce and Labor as it would be on the Government in the proceeding in which the order was issued,[77] although the executive decision is final on the point of whether or not the alien presenting the discharge is in fact the individual to whom it was issued.[78]

4. *Loss of Departmental Jurisdiction by Alien's Change of Status.*

It has been held that departmental jurisdiction may be lost by a change of status of the person detained for deportation; thus where, pending the deportation of an alien woman, and pending her application for release on *habeas corpus,* she marries a citizen of the United States she is at once entitled to her discharge from custody, and if this is refused to her release on the writ.[79] However, this is due to the fact that under the naturalization laws she herself becomes as an individual a citizen of the United States; and this can only occur when the woman herself is capable of being naturalized.[80]

And when an alien woman marries an alien abroad, who deserts her, and, after coming to the United States becomes a citizen of this country, she herself becomes a citizen of the

[77]Leong June v. United States, 171 Fed. 413. As is the judgment of a District Court in habeas corpus proceedings as to alien's right to remain. United States v. Chung Shee, 76 Fed. 951.

[78]*Ex parte* Long Lock, 173 Fed. 208; *ex parte* Lung Wing Wun, 161 Fed. 211.

[79]Hopkins v. Fachant, 130 Fed. 839; but see contra cases in chapter on Statutes.

[80]Where the change of status is brought about not by marriage, but by adoption, pending deportation proceedings it has been held that departmental officers do not lose their jurisdicition thereby. Co v. Rafferty, 14 Phil. Rep. 235. To deport the alien who has in this way actually acquired a bona fide communicated status which would entitle him to admission would seem a somewhat futile proceeding, since after being deported he would have a perfect right to enter on his return. See Rafferty v. Judge of First Instance, 7 Phil. Rep. 164.

United States and is not subject to the operation of the immigration laws even though after the desertion she becomes the mistress of another;[81] nor is the right of such a woman to enter the United States affected because she is at the time of attempted entry afflicted with trachoma.[82] In the course of a dissenting opinion rendered in the recent case of United States v. Sprung,[83] where the majority of the court refrained from passing on the exact point JUDGE PRITCHARD stated that "the immigration laws have not added to the persons incapable in their own right of naturalization." In an earlier Federal decision,[84] where the right to enter was based on a marriage the existence of which was not denied, the court observed, *obiter,* that it was admitted by both the Government and the applicant that the right to enter depended on whether or not there was a lawful marriage—but that where the marriage, although lawful in the country of origin was incestuous here the relationship could not be admitted to be such as to entitle the applicant to enter as an American citizen. Some courts have, however, taken the view that the acquisition of citizenship by marriage must depend on whether the woman is admissible under the immigration laws. Indeed, it has been held that where the purpose of the marriage was to avoid deportation the celebration of the ceremony did not remove the alien wife from the operation of the immigration law.[85] In this case the court was of the opinion that an alien woman belonging to a class of persons excluded by law from entry into the United States is incapable of naturalization, basing its decision on a prior Federal case to the same effect. In that case[86] the court said: "The immigration laws have since added to the class of persons who are incapable in their own

[81] *In re* Nicola, 184 Fed. 323.
[82] *Ibid.*
[83] 187 Fed. 914.
[84] United States v. Rodgers, 109 Fed. 886.
[85] *Ex parte* Kaprielian, 188 Fed. 694.
[86] *In re* Rustigian, 165 Fed. 980.

right of naturalization." For the reasons stated in a prior chapter,[87] it is thought that, given the administrative finding of fact of an actual marriage between a citizen of the United States and a woman of foreign extraction, the jurisdiction of the Secretary of Commerce and Labor ceases *ipso facto* and a departmental decision of exclusion or expulsion is not binding on the courts.

C. FINALITY OF DEPARTMENTAL FINDINGS AS TO RIGHT TO ENTER.

1. *Extent of and to What Applicable.*

In providing that the decisions of departmental officers should be final the Act of 1894 went no further than to require that the administrative decisions should be final as to the existence of the particular fact or facts on which the right of the alien to enter is based. Thus the decision of a customs official refusing a Chinese alien admission into the United States, who seeks it on the ground that he is a Chinese merchant and as such is entitled to enter, is final only as to his right to enter as such merchant and is not final in deportation proceedings brought before a United States commissioner in order to determine the right of the prisoner to remain in this country when such right is based on the claim that he is a citizen thereof; nor is the decision of a departmental officer, final although it may be as to the right of a Chinese person to land, final as to his right to remain, and cannot, therefore, constitute a bar to his right to remain in deportation proceedings before a United States commissioner.[89]

A final excluding decision rendered by an immigrant inspector at the port is effective, as far as the right of the alien excluded thereby is concerned, not only at the port where such decision was rendered, but at any other port

[87] Chapter on Status, *ante*, p. 385 *et seq.*

[89] United States v. Wong Chung, 92 Fed. 141.

where the alien may seek to enter.[90] Departmental decisions are not final, however, when rendered in deference to a departmental regulation providing for the exclusion of aliens where Congress has made no such provision,[91] but a decision based on a valid regulation is final, and the courts will not grant the writ when the ground urged in the petition is the exacting nature of the rules in the matter of the evidence to be required of aliens by which to establish their right to enter or remain in the United States.[92]

2. *Favorable Decisions Not Final.*

The act provides that only excluding decisions not reversed on appeal are final; therefore, the favorable decisions of executive officers are by necessary implication not final, and cannot constitute *res judicata* in a technical sense;[93] and the fact that an alien has been arrested once under the Act of February 20, 1907, on the charge of having committed abroad a crime involving moral turpitude and has been discharged by the Secretary of Commerce and Labor because he was not identified as the person named in the certificate of conviction will not authorize

[90] *Ex parte* Lung Foot, 174 Fed. 70.

[91] *In re* Kornmehl, 87 Fed. 314.

[92] *In re* Moy Quong Shing, 125 Fed. 641.

[93] Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029; Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Pearson v. Williams, 136 Fed. 734; Mar Bing Guey v. United States, 97 Fed. 576; *In re* Li Foon, 80 Fed. 881; and see Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; United States v. Lim Jew, 192 Fed. 644. The facts in this case showed that the defendant, a Chinese person, left the United States for China in 1905 and was allowed to re-enter as a native born citizen in 1908 on a certificate describing him as such. He was arrested in 1909 and found by the commissioner to be a native of China unlawfully in this country. In 1888 a United States Circuit Court rendered a decision to the effect that he was a resident of this country prior to 1880 and released him on *habeas corpus* proceedings. Held, the judgment not conclusive as to his nativity nor was the administrative finding at the time of his second entry *res adjudicata* of his citizenship, on which he based his right to remain. Affirmed in Lim Jew v. United States, 196 Fed. 736.

his release under *habeas corpus* proceedings when again arrested on the same charge by the same authority.[94]

3. *Administrative Findings of Fact Only Are Final.*

The question as to whether administrative officers are proceeding according to law is a judicial question and is at all times open to inquiry by the courts on *habeas corpus*.[95] And, though the final determination of a departmental official with power to determine the question may not be reviewed, the courts will inquire into whether the law grants such right of final determination;[96] or whether, on a given state of facts the right to deport at all lies with executive officers. Thus, where the Secretary of Commerce and Labor ordered an alien to be deported on the ground of having imported a foreign woman for an immoral purpose, and the court construed section 3 of the Act of March 26, 1910, to provide that such deportation can be legally accomplished only after actual conviction of the offense, the court ordered his discharge in *habeas corpus* on a showing that there had been no conviction.[97] It has also been held—and very generally—that the final determination of what statute may be applicable to a particular case coming before the Secretary of Commerce and Labor, or whether indeed, immigration laws apply at all, cannot rest with the executive department.[98] Therefore, when it is said that the courts have the right to determine who is an alien under the Act of March 3, 1901,[99] or that when the question as to the jurisdiction of de-

[94] *Ex parte* Stancampiano, 161 Fed. 164.

[95] Lavin v. Lefevre, 125 Fed. 693; *In re* Top Chin, 2 U. S. D. Ct. Hawaii 153; *In re* Pang Kun, *ibid.* 192.

[96] Rodgers v. United States, 157 Fed. 381.

[97] Lewis v. Frick, 189 Fed. 146, reversed by the Circuit Court of Appeals for the Sixth Circuit, 195 Fed. 693.

[98] Davies v. Manolis, 179 Fed. 818; Botis v. Davies, 173 Fed. 996; *In re* Lea, 126 Fed. 234; and see United States v. Taylor, 207 U. S. 120, 52 Law Ed. 130; Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

[99] *In re* Di Simone 108 Fed. 942, reversed upon confession of error.

partmental officers to decide as to the right of aliens to enter the United arises under the immigration laws the courts can inquire as to whether or not the officers had jurisdiction over the person affected by the decision, this should mean—not that the courts can pass on the correctness of the finding of fact whereby the officer reaches the conclusion that the alien is an immigrant,—but merely that they are empowered to decide, on the given state of facts, whether or not the law applies to the applicant.

4. *Necessity for a Fair Hearing.*

On the principles enunciated in the case of Yamataya v. Fisher (often referred to as the Japanese immigrant case[100]) no person can be deprived of his liberty and detained for deportation in the absence of having been afforded an opportunity to present the facts upon which the right to enter is based to the officer whose duty it is to pass on these facts,[1] and this principle applies with double force where the decision rendered holds that the master of a vessel is liable for bringing an alien into a United States port who escaped from the vessel, and after deserting became insane, and where the master was found guilty of an infraction of the immigration act of March 3, 1903, without being given an opportunity of pleading his case before the administrative authorities.[2] A fair hearing is absolutely essential to the right of executive officers to deport. But if such a hearing is granted to aliens subject to the operation of the exclusion and immigration statutes, and as a result thereof they have been excluded from admission into or expelled from this country without any abuse of authority, and in the absence of arbitrary action, recourse to the courts is absolutely denied.[3]

[100]189 U. S. 86, 47 Law Ed. 721.

[1]Hopkins v. Fachant, 130 Fed. 839.

[2]Waterhouse & Co. v. United States, 159 Fed. 876.

[3]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040; Yamataya v.

(A.) What Constitutes a Fair Hearing.

(1.) Opportunity to be heard.

The hearing must be appropriate to the nature of the case upon which the executive officers are to act, and the alien must be given all opportunity to be heard upon the question involving his right to be and remain in the United States;[4] but ignorance of the English language on the part of the alien does not necessarily make a hearing a "pretended" one and gives no ground for relief in *habeas corpus*.[5]

In the case of Chin Yow v. United States,[6] the petitioner was a Chinese person refused admission by the executive authorities. He sought relief in *habeas corpus*. The petition contained the usual allegations of citizenship, restraint and denial of entry by the authorities, and in addition thereto the further allegation that he was prevented from obtaining the testimony of certain witnesses duly designated by name, and that, had he been permitted he could have proved his citizenship in the United States through such witnesses—the import of these allegations being that the petitioner was arbitrarily denied the hearing which the statute meant he should have. The Supreme Court held that the foundation of jurisdiction of the courts in *habeas corpus* in such cases is the absence of a fair hearing, and of an opportunity to produce evidence; but that mere allegations to this effect do not open the case on the merits, and the fact that the department refuses to accept certain sworn statements as true is not of itself sufficient to give the courts jurisdiction.

Said the court: "The statutes purport to exclude aliens

Fisher, 189 U. S. 86, 47 Law Ed. 721; Edsell v. Mark, 179 Fed, 292; *Ex parte* Chin Hen Lock, 174 Fed. 282; *Ex parte* Lung Foot, 174 Fed. 70; *Ex parte Long Lock*, 173 Fed. 208; United States v. Wood, 168 Fed. 438; *Ex parte* Lee Kow, 161 Fed. 592; *Ex parte* Jong Jim Hong, 157 Fed. 447.

[4] Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

[5] *Ibid.*

[6] 208 U. S. 8, 52 Law Ed. 369.

only. They create or recognize.....the right of citizens outside the jurisdiction to return to the United States. If one alleging himself to be a citizen is not allowed a chance to establish his right in the mode provided by those statutes, although that mode is intended to be exclusive the statutes cannot require him to be turned back without more. The decision of the department is final, but that is on the presupposition that the decision was after a hearing in good faith, however summary in form. As between the substantive right of citizens to enter, and of persons alleging themselves to be citizens to have a chance to prove their allegation on the one side, and the conclusiveness of the commissioner's fiat on the other, when one or the other must give way, the latter must yield. In such a case something must be done, and it naturally falls to be done by the courts."

The court added that detention for deportation on a vessel constitutes actual imprisonment. "*De facto* he is locked up and carried out of the country against his will. The petitioner then is imprisoned for deportation without the process of law to which he is given a right. *Habeas corpus* is the usual remedy for unlawful imprisonment. But, on the other hand, as yet the petitioner has not established his right to enter the country. He is imprisoned only to prevent his entry, and an unconditional release would make the entry complete without the requisite proof. The courts must deal with the matter somehow, and there seems to be no way so convenient as a trial of the merits before the judge." [7]

(2.) Executive Officers Must Consider All the Evidence Submitted.

Executive officers have no power to designate what evi-

[7] Where an alien is held for deportation on the ground of being an alien stowaway which he denies, and who on the same ground is not granted any hearing whatsoever by a board of special inquiry, the court will grant his application for the issuance of a writ of *habeas corpus*. United States *ex rel.* d'Amato v. Williams, 193 Fed. 228.

dence shall be considered by them, but are under the obligation of admitting and passing upon all that is offered by the applicant;[8] and failure to admit it or the commission of acts that make it impossible for the applicant to present it, and to detain him for deportation without giving him an opportunity to present it is arbitrarily to deny him the right of a hearing provided by law.[9] And it has been held, and very naturally, that such officers may consult records which have a connection with the alien's case other than the precise papers which are sent up before the Secretary of Commerce and Labor on appeal, including in the latter records statements that have a bearing on the contents of the former.[10]

(3.) Denial of the Right of Appeal.

When the statute gives the right of appeal to higher departmental authority the refusal to grant such appeal denies the alien the "full opportunity to be heard" to which he is entitled, and he may claim relief by *habeas corpus* proceedings. Thus where, on an adverse decision of the board of special inquiry the defendant was refused the right to have the papers in the case forwarded to the Secretary of the Treasury, this was held to constitute a denial of the right of appeal and not to be binding on the courts;[11] similarly the right of appeal is denied where there is no hearing on the merits on the appeal to the Secretary;[12] and likewise where some of the evidence presented to the inspector including facts tending to prove

[8]United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917.

[9]Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369; *In re* Chop Tin, 2 U. S. D. Ct. Hawaii 153.

[10]*In re* Jim Yuen, 188 Fed. 350; Tang Tun v. Edsell, 223 U. S. 673, 56 Law Ed. ——.

[11]*In re* Monaco, 86 Fed. 117; and seee Rodgers v. United States, 152 Fed. 346, and United States v. Nakashima, 160 Fed. 842.

[12]*In re* Tang Tun, 161 Fed. 618; but on appeal held to constitute a hearing on the merits; see Tang Tun v. Edsell, *supra.*

the American citizenship of the petitioner is not included in the record sent up on appeal from the inspector to the Secretary of Commerce and Labor.[13]

(4.) Obligation of Departmental Officers to Pass on All Questions Before Them.

Executive officers must actually pass on the question before them; when they fail to do so and deportation is ordered before the examination is closed, and before the department's final decision is had on the appeal, the proceedings are devoid of final effect and the courts will be justified in intervening on behalf of the petitioner in *habeas corpus*.[14] Moreover, the precise claim on which the right to enter is based must be made the subject of a departmental finding, and the failure to do so cannot be supplemented by an excluding decision based on other grounds. Thus where the claim is that the Chinese alien seeking admission is a merchant and he is ordered deported by the immigration authorities without passing on his right to enter as a merchant, the decision is not final,[15] nor is it, under similar conditions when the claim is that of American citizenship in the alien;[16] and the fact that the alien claiming the right to admission as a citizen of this country is suffering with trachoma, a dangerous, contagious disease, does not render him subject to exclusion without recourse to the courts on the finding of the board of special inquiry that he is thus afflicted, although the act provides that the decision of the board is final in such cases and no appeal lies to the Secretary of Commerce and Labor.[17] If a person is a citizen he is, as such, whether or not suffering from any disease, beyond the

[13] *In re* Can Pon, 168 Fed. 479.

[14] *In re* Di Simone, 108 Fed. 942, reversed on confession of error; United States v. Jin Fung, 100 Fed. 389.

[15] *Ex parte* Ow Guen, 148 Fed. 926.

[16] United States v. Rodgers, 144 Fed. 711.

[17] United States v. Nakashima, 160 Fed. 842.

jurisdiction of the department to exclude, and a decision in which the claim of citizenship is passed over or ignored overlooks the preliminary question of whether executive officers have jurisdiction to pass on the applicant's case.

A hearing cannot be said to be either unfair or unlawful merely because in a given case the excluding decision has been rendered by the Assistant Secretary of Commerce and Labor instead of the Secretary in person;[18] but it has been held, however, that an excluding decision rendered by a board of special inquiry composed of members one of whom was the inspector who referred the case to the board as provided by section 24 of the existing law, being in doubt as to the eligibility of the alien to land, cannot be binding on the courts, inasmuch as the hearing before the board thus composed could not constitute the "fair hearing" which the law requires.[19]

5. *The Departmental Finding Must Constitute a Bona Fide "Decision."*

That the facts as found by the executive officers cannot be appealed to or examined by the courts has been too often authoritatively asserted to warrant more than passing mention. Still, in providing that the executive finding is final it cannot be denied that Congress assumes that an actual decision shall have been rendered, that such decision shall be the result of a fair hearing, and that the executive officer shall not act arbitrarily or abuse the powers conferred upon him. The result reached by the officer must partake of the nature of a decision, and the term itself necessarily implies the consideration of the facts presented *pro* and *contra,* in deciding which of the two groups represents the actual conditions. This seems to have been the view taken by the court in the case of

[18] *In re* Jem Yuen, 188 Fed. 350; and see *In re* Way Tai, 96 Fed. 484; Tang Tun v. Edsell, 223 U. S. 673, 56 Law Ed. ——.

[19] United States v. Redfern, 180 Fed. 500.

United States v. Wong Chung,[20] which presented that of a Chinese alien seeking admission to the United States who offered as evidence of his right to enter a "section 6" certificate complying in all respects with the law. The deputy collector refused to allow him to enter on the sole ground of a mere rumor reported to him by a person who had obtained it from a third party on hearsay only that the applicant "was going to a laundry." The court held that the alleged "decision" was not such as was contemplated by the statutes and that it was binding neither on the United States commissioner nor on the courts before whom the applicant was subsequently brought on appeal on the charge of being unlawfully in the United States. This decision has the support of later cases which hold that the courts have jurisdiction in *habeas corpus* when it appears that the evidence taken in deportation proceedings is absolutely uncontradicted and establishes as a matter of law that the case is not within the statute;[21] or when there is no evidence whatsoever to support the excluding decision.[22] Thus where an alien has been excluded from admission by the board of special inquiry on the finding that he was likely to become a public charge, and the facts showed that he had a recognized profession and property valued at several thousand dollars, some of which consisted of diamonds and jewelry given an appraised value of $640, and in addition thereto had offers of employment in this country from reputable residents it was held that there was no evidence which could justify such a finding.[23]

The courts, however, are slow to reach the conclusion that the facts presented to administrative officers are not

[20]92 Fed. 141.

[21]*Ex parte* Petterson, 166 Fed. 536 (obiter).

[22]*Ex parte* Saraceno, 182 Fed. 955; United States v. Williams, 175 Fed. 274.

[23]United States v. Williams, 189 Fed. 915; nor was there held to constitute any evidence in law to the effect that an alien woman was likely to become a public charge, where, after being induced by a false offer of marriage to accompany a foreigner to this country it was shown that she

such as to afford any evidence to support the administrative finding and thereby deprive the ultimate finding of all validity on the ground that it did not constitute a "decision." Indeed, in a recent case,[24] where the right of the petitioner to remain was alleged to consist in American citizenship acquired by her marriage to a citizen of this country and supported by an unimpeached marriage certificate, the court refused to grant her relief in *habeas corpus* in spite of the circumstance that the certificate, together with other facts, pointed strongly to the existence of the marital relationship; all of which had been submitted to the examining officer. There was, however, a strong dissent expressing the view that the circumstances were such as to preclude the existence of a fair hearing, particularly where as in this case, the examining officer had stated that even if he had been convinced that the certificate was not colorable he would have passed unfavorably on the petitioner's case. And relief has been refused even where the marriage was shown to have actually existed and the fact was not even contradicted by the government.[25]

The effect of marriage in its application to the status of the parties under the immigration acts has already been discussed.[26] The view of the majority of the court in the Sprung case—in holding that the marriage certificate might in connection with all remaining circumstances be disregarded without rendering the executive finding subject to being upset on the charge of unfairness—certainly seems open to criticism. Granting that it is within the power of executive officers to determine whether the parties coming before them and presenting what is the equiva-

forsook him and was successful in a breach of promise suit later brought against him, that she was 26 years old, followed the occupation of nursing, had secured a substantial judgment against the defendant, had funds and friends here, and that there was no indication whatever that she was likely to become a public charge. United States v. Martin, 193 Fed. 795.

[24]United States v. Sprung, 187 Fed. 903.

[25]*Ex parte* Kaprielian, 188 Fed. 694.

[26]Chapter on Status, *ante*, p. 403 *et seq.*

lent of at least *prima facie* proof of the existence of the facts on which their right to enter or remain in the United States is based are actually the parties to whom the documents—whether certificates of marriage, naturalization, or certificates issued under the Chinese exclusion laws—were originally issued, it is equally true that while such a document may be overcome by proper evidence its legal effects should not be destroyed in the absence of positive and competent evidence.[27] It may be that in such cases the executive officer, for reasons which appeal to him, is not satisfied that the documents are genuine, or that the parties presenting them are those described therein, or that the status which those documents purport to confer exists. But it will not do for him to make even genuine suspicion the sole basis of an unfavorable decision—and if he does the courts should not shrink from the responsibility of passing on the facts. It seems unreasonable, to say the least, to give less credit to an instrument of such solemn and authoritative import as a marriage certificate than to a certificate of residence issued under the exclusion acts. And in this connection it may be said that it has been held recently that the courts will intervene where a Chinese person has received a certified copy of the judgment of a United States Commissioner that he is an American citizen where, on his return from a trip abroad, undertaken with the permission of the Department of Commerce and Labor, the immigration officers on his return refused to give such certificate full force and effect, merely because there was evidence of erasure on the document, but no proof that it had been made by the applicant; and that to exclude him as the result of slight discrepancies easily explained was, under the circumstances, to deny him a fair hearing, since "the refusal to permit him

[27]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888; Lew Quen Wo v. United States, 184 Fed. 685; *In re* Tom Hon, 149 Fed. 842; *In re* See Ho How, 101 Fed. 115.

to return had no tangible basis on which to rest and was without authority of law." [28]

The fact already adverted to[29] that departmental officers must examine and pass upon all the evidence before them must not be taken to mean that because they are under the obligation of examining all the testimony introduced at a hearing they are not, within the limits stated, at liberty to give no credence to any part thereof which may appear to them to be entitled to no weight. Their duty is done and their word is final, except insofar as the alien may take advantage of an administrative appeal, once they give the alleged facts presented their fair and full con-

[28] United States v. Chin Len, 187 Fed. 544; but see *In re* Sue Yen Hoon, 3 U. S. D. Ct. Hawaii 606, where the court held that the departmental officer was not bound to admit a Chinese applicant for admission who presented are apparently valid and duly issued certificate of his birth in the islands. It was here contended that the inspector did not accord these certificates their proper legal effect, but the court said that since the petition showed that hearing was had and did not claim that the inspector refused to hear any evidence the petitioner had to offer, or that all the evidence was not sent up on appeal, the court could not review the finding that the petitioner was not, in fact, born in Hawaii. The court apparently took the view that in the absence of a law which stated that such certificates should constitute *prima facie* evidence of birth in Hawaii which could not be overcome except by positive testimony to the contrary, they would be given no more force than any other proper allegation of the applicant's birth in the Hawaiian Islands, oral or otherwise, which the inspector might believe or not, as he chose. Even in the absence of any such special provision, it certainly seems that such certificates, constituting as they do written evidence of the existence of the fact, made at the time of its occurrence, should be given in deportation cases, the same significance which any other apparently genuine official document is given under the common law. It hardly seems equitable to hold that, as this same court did in a previous case, it was to be presumed that all births were recorded in the Hawaiian Islands because the law penalized the failure to so record them, and to base the refusal to admit an alien who claimed birth in Hawaii on the fact that there was no record of such birth and, on the other hand, to hold that such records, when presented as proof of such birth, do not give rise to a presumption of such birth which requires positive and direct testimony for its rebuttal. It seems clear that failure to accord such a document its proper value might result in an unfair hearing, and that the question might be well considered by the court on this ground.

[29] *Ante*, p. 517.

sideration. Thus the fact that the board's decision is based on the personal appearance and the characteristics of the alien as revealed at his examination will not throw the executive findings open to judicial review merely because the board in its decision placed no weight whatsoever on the testimony given by the applicant or his friends, and because his personal characteristics, actions and appearance alone appeared to them to justify an excluding decision.[30]

The decisions above cited in which the courts have reviewed the administrative findings of fact on the ground that there was no evidence to support them cannot, of course, be considered as holding that the courts can questhe mere correctness or incorrectness of the departmental officer's finding of facts, for it is well settled that they have no such power;[31] and the fact that a court may be of the opinion that there was sufficient evidence to warrant a finding the other way will not justify it in assuming jurisdiction.[32]

The jurisdiction of the courts to review the evidence has thus been stated: "This court can only examine the evidence to see: (1) Was a full and fair and unbiased hearing had? (2) Was the decision based on such a state of facts that a question of fact was presented for the decision of the inspector? or (3) was the evidence conclusive as a matter of law so that the decision, affirmed by the Department of Commerce and Labor was arbitrary and unwarranted?" [33]

The right of the courts to interfere in such cases can only (and it would seem correctly) be supported on the principle that an executive order of deportation, not based on any facts which tend to show that the person to be de-

[30]United States v. Williams, 190 Fed. 897.

[31]Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369.

[32]Chin Yow v. United States, *supra;* United States v. Williams, *supra; Ex parte* Lee Kow, 161 Fed. 592.

[33]*Ex parte* Long Lock, 173 Fed. 208.

ported is excludable under the exclusion or immigration acts is, aside from wanting the elements of a decision, necessarily arbitrary,[34] and, if arbitrary, cannot be said to be be the result of a fair hearing.[35]

6. *Abuse of Authority.*

It is not every abuse of authority on the part of the immigration officials that will result in giving the alien who has been subjected thereto a right to turn to the courts for relief. Officers may in the course of the proceedings commit acts of themselves improper, and in no wise authorized either by statutory provisions or departmental regulations—but, provided that the result of these abuses is not to deprive the alien of a fair hearing, it is hard to see how their commission can affect the right of the Government to deport, or enlarge the scope of the relief which the alien may claim as a matter of right beyond that provided by the purely administrative procedure which the law has prescribed to meet his case. The mere fact that an alien has been roughly or unfairly treated pending detention for examination does not necessarily mean that he is deprived of a fair hearing; at the same time, if as the direct result of such treatment he were prevented from testifying or from testifying as fully as he otherwise might have done; or if by threats or intimidation he were prevented from availing himself of any right necessarily incident to a fair hearing, or which by law

[34] *Ibid.*

[35] But see *contra* Glavis v. Williams, 190 Fed. 686, where the court disclaimed the power to examine the question of whether there was any evidence at all on which the Secretary of Commerce and Labor could base his decision of expulsion. This view is, however, decidedly against the weight of authority. At an early date in the history of the exclusion and immigration acts it was held that the finality of the collector's decision depended upon whether the evidence on which an excluding decision was based constituted competent evidence of the facts as found by the collector and on which he attempted to justify his decision. *In re* Cummings, 32 Fed. 75.

or regulation he is entitled to exercise, the hearing itself would be tainted; and if tainted undoubtedly he would be entitled to seek and obtain his relief in the courts.

In the case of Lee Gon Yung v. United States,[36] a Chinese person seeking admission for purposes, it was alleged, of transit, was prohibited from entering by the immigration authorities and held for deportation to China. He applied for a writ of *habeas corpus,* which was denied, whereupon the petitioner appealed. The petition stated that upon his arrival he was examined by a customs inspector, his baggage and private papers opened, and his person searched. The Supreme Court upheld the jurisdiction of the collector to detain the petitioner for deportation under the circumstances, stating that if the petitioner had just cause of complaint of the conduct of the collector's subordinates the remedy was not to be found in his discharge on *habeas corpus;* in other words, that the fact that the customs inspector might have violated the constitutional provision against unlawful searches and seizures did not go to the jurisdiction of the collector to deport an alien found by him not to be entitled to enter this country. The Supreme Court had, moreover, held in the case of Fong Yue Ting,[37] that the constitutional guarantee against unlawful searches and seizures had no application to the immigration acts.

In the case of Yamataya v. Fisher,[38] the contention was made that the alien, who had been arrested for deportation within one year of her entry by authority of the Act of October 19, 1888, had been given only a pretended hearing by the departmental officers touching her right to remain, it being alleged that the petitioner had no knowledge of the English language and that as to her there was no fair hearing. But the Supreme Court held that these

[36]185 U. S. 306, 46 Law Ed. 921; Fok Young Yo v. United States, 185 U. S. 296, 46 Law Ed. 917.

[37]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[38]189 U. S. 86, 47 Law Ed. 721.

were considerations which should have been presented to the departmental officers primarily in charge of the case, or on appeal to the Secretary of the Treasury, and that failure to do so would not justify the intervention of the courts. "It is not to be presumed," said the court, "that either would have refused a second or fuller investigation, if a proper application and showing for one had been made by the appellant." * * * "And as no appeal was taken to the Secretary from the decision of the immigration inspector that decision was final and conclusive. If the appellant's want of knowledge of the English language put her at some disadvantage in the investigation conducted by that officer, that was her misfortune and constitutes no reason under the acts of Congress or under any rule of law for the intervention of the court by *habeas corpus*." The court obviously entertained some doubt as to the sincerity of the claim of lack of knowledge of the English language; particularly since the petitioner had not apparently sufficient faith in its efficacy to encourage her to present it as the basis of the administrative appeal provided by law. The decision stands unequivocally for the principle that a hearing is not pretended merely because the alien has no knowledge of the English tongue. To maintain the contrary would be tantamount to declaring that no alien seeking the benefit of our institutions could be deported under the law except after an examination conducted in the language of his country of origin—a contention manifestly absurd. But it would be equally unreasonable to suppose that the court meant by its language to convey the idea that a hearing would be fair which was limited to proceedings of the nature of which neither the alien nor his representative had any understanding, or where, in the absence of such understanding on the part of the alien himself, or in the absence of representation departmental officers should take advantage of the alien's unfortunate situation to render an excluding decision. Such a contingency is, however, most unlikely to occur; and it

must furthermore be borne in mind that the examining officers are not, as a matter of law, bound to go further in their investigation than the appearance, behavior and characteristics of the alien himself—at least in the case of aliens seeking admission. In the case of foreigners arrested within the country for deportation the provision that they may have the assistance of counsel would necessarily involve the consideration of other proofs by the examining officer.

It is thought that the principles enunciated in the Yamataya case[39] and later cases of the United States Supreme Court[40] have not been always altogether correctly interpreted by the lower Federal courts. "This court," says MR. JUSTICE HARLAN in the Yamataya case, "has never held, nor must we now be understood as holding that executive officers, when executing the provisions of a statute involving the liberty of persons may disregard the fundamental principles that inhere in due process of law. ..... It is not competent for.....any executive officer.....arbitrarily to cause an alien to be.....deported without giving him all opportunity to be heard upon the questions involving his right to be and remain in the United States. No such arbitrary power can exist where the principles involved in due process of law are recognized."

In the case of Glavas v. Williams[41] it appears from the somewhat meager statement of facts reported that an alien was arrested by the immigration authorities on the charge of being unlawfully here, and held for deportation. It seems that one of the grounds on which his unlawful presence was predicated was that he had admitted the commission of a crime involving moral turpitude. The affidavit presented by the petitioner after the return of the

[39]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

[40]Gonzales v. Williams, 192 U. S. 1, 48 Fed. 317; Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369.

[41]190 Fed. 686.

writ stated that the admission was obtained through plying him with liquor, and by means of threats. But this, said the court, was wholly a question of fact for the executive authorities with whose decision the court would have no right to interfere, had any such evidence been presented. The charge that the admission had been obtained in this way appeared for the first time in the court proceedings. It seems plain that, granting that the admission was obtained by unjust or unlawful methods the obtaining of such admission constituted no part of the hearing. The proceeding before the officer authorized to determine whether the alien had the right to remain afforded the opportunity provided by law whereby the prisoner might attempt to show, if he so chose, that the statement was unlawfully obtained, and might or might not substantiate the charge. This, by his silence, he refused to do, under the impression that he could reserve this defense for a later occasion. This was no more or less than an attempt to obtain a judicial determination of a question of fact which the law reserves for the consideration of departmental authorities; and, as was decided in the Ju Toy case,[42] was destined to failure. But the court proceeds:[43] "Nor do I understand that even an abuse of authority is reviewable provided that a hearing be given, and certain elementary procedural rights are observed in form." The court interpreted the Yamataya case "as meaning that abuse of their powers by the authorities is a matter only of executive discipline provided that the requisite forms are not violated..... It becomes unnecessary to determine whether the admission of having committed a crime involving moral turpitude mentioned in section 2 of the act must take place at the time of the hearing or may occur before. It also renders unnecessary a determination whether the admission actually made upon the hearing

[42]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

[43]p. 687.

by the relator was an admission of the commission of such a crime."

It is difficult to concede the correctness of this reasoning. As before stated if the charge made at the hearing was that the alien had made a statement which, if constituting an admission, would render him subject to deportation it was one for him to refute at the time of the hearing, and was thus a question of fact for the departmental officers' exclusive determination. If it was found as a matter of fact that the statement was the result of threats or abuse, whether or not it constituted an admission as a question of law was also within their jurisdiction to decide; but their conclusion of law would be open to judicial review. But, if the alleged admission was made at the hearing itself, as the result of threats or intimidation or other unlawful or unfair acts on the part of the presiding officer or his subordinates how could it be contended in the face of numerous decisions by the highest Federal tribunal that the courts would be powerless to correct such abuses of authority? The fact is that abuse of authority at the hearing which takes the form of producing evidence for the Government as the result of threats or intimidation directed toward the witness cannot be co-existent with the observance of certain elementary procedural rights either in form or in substance. To concede the existence of the one is to deny the observance of the other. It cannot, it is thought, be successfully denied that where an alien has been accorded the opportunity to call witnesses, to be represented by counsel, to be informed of the charge against him, to have a hearing before a designated tribunal and a chance to present his side, that he has had a fair hearing; but it seems equally true that to extract statements from him at that hearing by means of threats, and to make the statements thus elicited the basis of the warrant authorizing his deportation, is in effect to deprive him of a full chance to present his side of the case, since such an admission must, if given any weight, necessarily

destroy the effect of any other evidence which he might produce.

It is in vain that we may search the Yamataya decision[44] to support the judicial view enunciated in this case to the effect that if the admission claimed was made at the time of the hearing and obtained by the adoption of the methods charged, the court was powerless to interfere. There the Supreme Court passed on the point as to whether or not the hearing was "pretended," and found that it was not; here the judge denied his power to pass on the question of an abuse of authority even if alleged to have taken place at the hearing. But for the reasons already stated, it is thought that the court was right in refusing to grant the writ requested, since it appears that to do so would have been to pass on a fact which apparently arose before the hearing was had, was not a feature of the proceedings and was, therefore, within the exclusive jurisdiction of departmental officers.

7. *Questions of Law and Fact.*

The principle that, by virtue of the Act of August 18, 1894, the courts cannot pass on questions of fact, but are nevertheless empowered to pass upon questions of law, is easily stated. But it is not always easy to distinguish a question of fact from a question of law.

(A.) Whether an Alien an Immigrant a Question of Fact.

The question arising under the immigration acts of whether or not an alien seeking admission was an immigrant was treated as a mixed question of law and fact on which the court had a right to pass.[45] To a certain extent, however, these holdings may be deemed to be misleading. The status of an alien seeking admission to the United

[44]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721.

[45]*In re* Di Simone, 108 Fed. 942; United States v. Burke, 99 Fed. 895.

States—and by status is meant no more or less than the result of the inspector's finding of fact—was, even prior to the Act of 1894, a condition the existence of which did not come within the province of judicial investigation by re-examination of the facts on which the inspector's finding was based. But the remedy of *habeas corpus* was open to any alien deprived of his liberty under color of the authority of the United States,[46] and the court could determine whether or not the petitioner was deprived of any right to which he was entitled by any law or treaty.

It would seem that in the present state of the law, the courts, when passing on the rights of aliens to enter the country, under the immigration acts, do not decide a mixed question of law and fact; that they are restricted to the executive officer's finding of fact, and on those facts decide the legal effect of the alien's status, thereby passing on the pure question of law as to whether or not the acts in question apply to the alien. It is true that several of the Federal decisions rendered on this point appear to hold that the decision of the Secretary of the Treasury was necessarily binding on the courts, although as a matter of fact and law the aliens excluded were not immigrants.[47] But it would seem that if, as was decided, they were not immigrants as a matter of law, they were not as a matter of law subject to the operation of an act held to apply only to immigrants. But whether or not the court could justly assume jurisdiction would depend on whether the facts as found by the Secretary showed that they were not coming to the United States to resume a formerly acquired and unrelinquished domicile.

Reduced to its lowest terms the present situation of the law with regard to questions of law and fact seems to be

[46]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340; Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503; United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591; Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770.

[47]*In re* Ota, 96 Fed. 487; *In re* Giovanna, 93 Fed. 659.

this: Where the alien seeks admission to the United States the administrative finding as to what class of aliens he belongs, based on the classification prescribed by the Chinese-exclusion and Immigration laws is a pure finding of fact and is absolute and final on the point. Until this stage is reached the courts are powerless to disturb such a finding provided that the hearing has been fair. Thus, if the Secretary of Commerce and Labor finds that the applicant for admission is an immigrant—that he is coming to the United States for the first time for the purpose of making this country his home—the case can proceed no further, for there is no question of law for the courts to consider.

But suppose the Departmental findings reveal facts which show that the applicant, although an alien, is not an immigrant, but he is excluded on the assumption that the Immigration laws apply to him. The administrative reasoning which inspires his exclusion involves the determination of no fact concerning the applicant and leads to no more than a simple conclusion of law reached by the appropriate executive officer. Were the courts to pass both on whether the applicant is an immigrant and on whether, not finding him to be such, the immigrant laws apply to him as an alien, then indeed would they, in passing on the whole, be considering two separate questions, the first a point of fact, the second a point of law. But in passing on the question of whether the immigration laws apply to an alien who is frankly admitted by the administrative officers not to be an immigrant the only point which the courts have to consider, or which they have the right to consider, is the question of whether the immigration acts apply—a pure question of law.

It is conceded that when the administrative conclusion is that the alien is an immigrant this decision, based on the facts submitted to executive officers is final, as far as the courts are concerned. But in the event that the department finds that the alien is domiciled in this country and

is returning to resume such domicile and yet concludes on the whole that he is an immigrant and therefore subject to exclusion, would the case end there? Obviously not. In order to constitute a finding of fact the conclusion reached must be the logical result of the facts revealed by the inquiry. The personal status of an individual seeking admission under the immigration acts is a pure question of fact to be determined by marshalling the various facts which are proven to exist during the course of the examination and which are found to be true by the officer in charge. The departmental finding consists of the sum of these facts—not of the words of description by which the officer designates them as a whole. To apply the term "immigrant" to an alien who is found not to be coming to this country to make it his home, or is found to be domiciled here, would be as gross an error as to find that a foreigner is of Caucasian blood and state as the result of such finding that he is of Chinese descent. In case an alien were excluded from admission under such conditions the courts would have jurisdiction to review the departmental action on either of two grounds: first, that the so-called "finding"—*not being based on the facts as found* by the officer constitutes no decision; or, second, the court, ignoring the wrong words of description as utterly immaterial would pass on the separate question of law as to whether, on the facts as found, the alien was subject to the operation of the immigration laws.

(B.) Whether Chinese belong to Exempt Classes a Question of Fact.

Under the Chinese-exclusion laws departmental officers had always had the right prior to the passage of the Act of 1894 to finally pass on the point as to whether an alien seeking admission into this country belonged to a particular *class* of Chinese. But before the passage of that act the courts had always exercised the power of considering whether or not the applicant was entitled to enter under

any law or treaty. The effect of the Act of 1894 was to leave the administrative finding as to class where it was before—beyond the reach of judicial review—but to permit no further appeal to the courts merely because the contention was made that a right secured to the alien by treaty was involved. But the question of law was still necessarily left open as to whether or not a law or treaty applies to aliens found by departmental officers to belong to a particular class; for if a foreigner is not seeking admission by virtue of a law or treaty he certainly cannot be excluded as attempting to enter under either. Thus the Supreme Court has on various occasions exercised the right of passing on whether the immigration act applied to certain classes of persons not citizens of the United States.[48] The question of whether or not a Chinese person seeking admission as one of the exempt classes is seeking to enter under any law or treaty cannot arise, since no Chinese person can enter this country except by virtue of the laws or treaties covering the subject; consequently the only questions on which departmental officers have to pass in such cases are necessarily included in the consideration of facts whereby it is to be determined whether or not the applicant belongs to one of the exempt classes.

(C.) Citizenship a Question of Fact, or a Mixed Question of Law and Fact.

Where a person seeks admission into this country on the ground that he is an American citizen a different situation is presented. In the case of persons of Chinese descent where the existence of the political status claimed must depend on one fact alone—that of birth in the United States—it has been decided in a multitude of cases that the question of American citizenship is one of fact the final determination of which is vested in executive offi-

[48]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317; Taylor v. United States, 207 U. S. 120, 52 Law Ed. 130.

cers.[49] But where such determination involves a conclusion of law it presents a mixed question of law and fact, and the departmental finding is generally held to be subject to judicial review.[50]

(D.) Other Questions of Fact.

Where a Chinese merchant domiciled in the United States petitions the Court in habeas corpus on behalf of an alleged minor son detained for deportation by the Immigration authorities the question of whether the relationship exists is one of fact, and subject to final determination by the department;[51] and when the alleged wife and minor children of a Chinese merchant seeking admission into the United States under the laws and treaties applicable to Chinese even though presenting the certificate required by the Act of 1882, are refused admission the courts will not interfere in habeas corpus, though it appears that the Collector may have "disregarded" the contents of the

[49]Ju Toy v. United States, 198 U. S. 253, 49 Law Ed. 1040; United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917; *In re* Tang Tun, 168 Fed. 488; *Ex parte* Lung Wing Wun, 161 Fed. 211; *Ex parte* Jong Jim Hong, 157 Fed. 447; Wong Sang v. United States, 144 Fed. 968; *In re* Moy Quong Shing, 125 Fed. 641; *In re* Sun Yen Hoon, 3 U. S. D. Ct. Hawaii, 606; Ngo Ti v. Shuster, 7 Phil. Rep. 355.

[50]See De Briuler v. Gallo, 184 Fed. 566. For decisions on the acquisition of American citizenship by marriage by women of foreign extraction to American citizens or by the naturalization of the husband see Chapter on Status, *ante*, p. 383.

In the case of Lorenzo v. McCoy, 15 Phil. Rep. 559 the facts as found by the collector of customs of Manila were that the applicant for admission was apparently born in the Philippines in 1874, of a Chinese father and a Filipina. The birth was out of wedlock. In '89 he left for China where he remained until 1908 when he returned to the Philippines. The collector reached the conclusion that if he had ever been a citizen of the Philippines he had renounced his citizenship by his absence. This conclusion was treated by the Court as deciding no more than a mere question of fact, and it refused to grant the applicant judicial relief. It would seem that the collector's decision may well have involved a question of law. The Chief Justice dissented.

[51]Wong Sang v. United States, 144 Fed. 968; *ex parte* Wong Sang, 143 Fed. 147; *in re* Lee Yee Sing, 85 Fed. 635; as is the question whether the applicant is a minor. Go To Sim v. McCoy, 16 Phil. Reports 497.

certificate;[52] nor when the collector finds that the certificate presented by the alleged wife and child do not meet the requirements of the statute.[53] The "disregarding" of the certificate in the case above cited cannot be deemed equivalent to a refusal to consider it. As stated elsewhere[54] certificates of identification constitute but prima facia evidence of the proof of the facts therein alleged, and the act which authorized their use provided specifically that their contents might be controverted by the Government. Moreover the Collector found as a fact that the woman was a plural wife of the resident merchant, although legally married to him in China, and was not satisfied that the child was his legitimate offspring. Aside from this feature, however, the administrative officer excluded the applicants for admission under laws and treaties of the United States, which constituted the only authority under which persons of their nationality could enter at all; and for this additional reason his decision was not subject to judicial review.

Departmental decisions have been held final with regard to the following facts: The identity of a Chinese alien presenting as his warrant for admission a certificate purporting to have been issued to him by a United States Commissioner;[55] as to whether an alien is an anarchist[56] or is afflicted with a loathsome disease[57] or is a public charge;[58] and the writ of habeas corpus will not be granted on the application of a Chinese laborer detained for deportation by the Collector of Customs on a finding that

[52]Lee Lung v. Patterson, 186 U. S. 168, 46 Law Ed. 1108; and see *in re* Yim Quock Leung, 1 U. S. D. Ct. Hawaii, 166.

[53]*In re* Lee Lung, 102 Fed. 132.

[54]*Post*, p. 577.

[55]*Ex parte* Long Lock, 173 Fed. 208.

[56]United States v. Williams, 194 U. S. 279, 48 Law Ed. 979.

[57]Pearson v. Williams, 202 U. S. 281, 50 Law Ed. 1029.

[58]Gonzales v. Williams, 177 Fed. 689; United States v. Rogers, 65 Fed. 787; United States v. International Marine Company et al., 194 Fed. 408.

the alien, although asserting that his purpose in attempting to enter the United States is to exercise the right of transit accorded members of that class by Article III of the Treaty with China of 1894, is not seeking to enter for that purpose.[59] The finding that the person seeking admission is an alien is final although he possesses a passport purporting to have been issued to him by the Secretary of State of the United States.[60]

On failure to perfect the appeal allowed by law from an executive finding of fact to the proper administrative officer—as to aliens seeking admission to the country the Secretary of Commerce and Labor—the courts will refuse to take jurisdiction on habeas corpus[61] although the failure to take the appeal will be no bar to the relief sought where the excluding decision of a board of inquiry is made final by statute, and the facts show that the board has failed to pass on some of the grounds on which the right to enter is based, and where the act is held not to apply to the petitioners.[62]

D. FINALITY OF DEPARTMENTAL DECISIONS AS TO THE RIGHT TO REMAIN.

The act of March 3, 1903, has no application to aliens

[59]Fok Young Yo, 185 U. S. 296, 46 Law Ed. 917; Lee Gon Yung v. United States, 185 U. S. 306, 46 Law Ed. 922; *in re* Lee Gon Yung, 111 Fed. 998.

[60]Edsell v. Mark, 179 Fed. 292.

[61]Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917; *ex parte* Chow Chok, 161 Fed. 627; *ex parte* Wong Sang, 143 Fed. 147; Wong Sang v. United States, 144 Fed. 968. N. B. Where the court refers to the failure of the alien to appeal in the case of Yamataya v. Fisher the word appeal is used in a general rather than in a technical sense. No "appeal" lies in deportation proceedings from proceedings held subsequently to the arrest of an alien alleged to be unlawfully in the country. He is arrested by order of a warrant issued by the Secretary of Commerce and Labor whose deputy presides over the proceedings. The Supreme Court points out that the Secretary had the power to grant a second hearing should he choose to do so.

[62]United States v. Nakashima, 160 Fed. 842.

lawfully in the United States,[63] and the same is true regarding the Act of February 20, 1907. The Act of 1894 making administrative decisions final is in terms limited to the decisions of departmental officers not reversed on appeal to the Secretary of the Treasury (now the Secretary of Commerce and Labor), which operate to exclude aliens from admission into this country. Under the present act the boards of special inquiry are the administrative bodies vested with the power to pass upon the question of admissibility regarding aliens under that law, and the decision of such a board is by section 10 specifically made final in the cases set out therein; otherwise final only if not reversed by the Secretary on appeal.[64]

Under the Chinese Exclusion acts jurisdiction to decide whether aliens once admitted to the United States are entitled to remain is vested in United States Commissioners, an appeal on the facts to the District Court of the United States being provided by law.

Section 21 of the Immigration act provides that if the Secretary of Commerce and Labor is satisfied that an alien has been found in the United States in violation of the act, or that the alien is subject to deportation under the provisions thereof or under any law of the United States, he shall cause the alien within three years after entry to be deported; but the act contains no specific provision that such a finding shall be final.

In a decision rendered under the Act of March 3, 1891, providing for the return of aliens who had been found to have entered this country unlawfully it was held that the finding of the Secretary of the Treasury to that effect was final and not subject to judicial review;[65] and a later decision rendered when the same statute was in force was to the effect that the Secretary's finding, not being in terms made final, as it was in the case of aliens excluded from

[63]Frank Waterhouse & Co. v. United States, 159 Fed. 876.

[64]Sec. 25.

[65]United States v. Arteago et al., 68 Fed. 883.

admission to the United States, this fact did not affect its validity and that it must be held to stand until reversed by higher authority.[66] This was in effect to hold that paramount authority existed, and that to that extent at least the Secretary's decision was not final; and it was so held, under the same act, regarding the right of a Chinese person not a laborer, to remain in the United States.[67] In passing upon the authority of the Secretary of Commerce and Labor finally to decide the right of aliens to remain in this country under the Act of March 3, 1903, the court held that where an alien woman was arrested under the act the question as to whether she entered prior to the act, and was thus not subject to its provisions, was one for the court to consider on habeas corpus proceedings, and which, if decided in the affirmative would authorize the discharge of the petitioner.[68]

Under the existing law.

Several decisions rendered on the point under the present act hold that the decision of the Secretary that an alien is unlawfully here and is not entitled to remain is not final, but is subject to judicial review.[69] But in some of the above cases at least the decision was based on the fact that as a matter of law the parties detained for deportation were not included within the operation of the act, rather than turning on the bare question of the finality of the Secretary's holding regarding the right of aliens already in the United States to remain.[70] The

[66]United States v. Yamasaka, 100 Fed. 404.

[67]United States v. Chin Fee, 94 Fed. 828.

[68]*In re* Lea, 126 Fed. 234.

[69]Redfern v. Halpert, 186 Fed. 150; Davies v. Manolis, 179 Fed. 818; Botis v. Davies, 173 Fed. 996; Frank Waterhouse & Co. v. United States, 159 Fed. 876; and see Moy Suey v. United States, 147 Fed. 697; *Ex parte* Saraceno, 182 Fed. 955.

[70]Davies v. Manolis, 179 Fed. 818; Botis v. Davies, 173 Fed. 996.

finality of the departmental decision in this regard has, however, occasionally been squarely upheld.[71]

The writ will be granted where it appears that during the proceedings terminating with the issuance of the Secretary's warrant of deportation of aliens charged with conducting a house of prostitution they were persuaded through intimidation on the part of the governmental officers not to employ counsel;[72] but not where the only ground alleged in the writ is that the board of special inquiry had decided (when they applied for admission) that the petitioners, subsequently detained for deportation within the three year period, were lawfully entitled to enter the United States;[73] nor where an alien prostitute based her claim to remain on prior residence of three years under the act of February 20, 1907, and she is proceeded against under the Act of March 26, 1910, for acts committed after that time, although she includes in the petition her prior discharge under proceedings instituted under the Act of 1907,[74] as neither the discharge nor the favorable finding by the board of special inquiry constitute *res adjudicata.* Nor will the writ be granted on the ground that the petitioner, shown to have entered the United States surreptitiously, is in the United States in violation only of an immigration rule, and not in violation of the Immigration Law which does not in terms prohibit surreptitious entry,[75] nor where the petition shows that the petitioner, a woman of Chinese descent, formerly admitted on a showing that she was an American citizen, is later arrested for deportation, where copies of the alleged unlawful process are not annexed to or set out in the petition.[76]

[71]United States v. Sprung, 187 Fed. 903; and see Yamataya v. Fisher, 189 U. S. 86, 47 Law Ed. 721; *in re* Umeno, 3 U. S. D. Ct. Hawaii, 481; Prentis v. Di Giacomo, 192 Fed. 467; Prentis v. Stathakos, 192 Fed. 469.

[72]United States v. Williams, 185 Fed. 598.

[73]Pearson v. Williams, 136 Fed. 734.

[74]Sire v. Berkshire, 185 Fed. 967.

[75]*Ex parte* Hamaguchi, 161 Fed. 185.

[76]Haw Moy v. North, 183 Fed. 89.

E. SHOWING NECESSARY TO ENTITLE APPLICANT TO A JUDICIAL HEARING.

In the case of United States v. Ju Toy[77] and in the more recent case of Chin Yow v. United States[78] the Supreme Court passed on the nature of the allegations which the petition should contain in order to give the courts the right to grant even a preliminary hearing in *habeas corpus*.

The Ju Toy case came up on a certificate from the United States Circuit Court of Appeals for the ninth Circuit presenting the questions: (1) whether *habeas corpus* should be granted in behalf of a person of Chinese descent whose right to enter the United States has been denied by the immigration officers, and affirmed on appeal by the Secretary of Commerce and Labor, and citizenship is the only ground alleged as making the detention unlawful, and (2) whether under such circumstances the writ should be dismissed or a further hearing be granted, and (3) whether the decision of the Secretary of Commerce and Labor is conclusive, in the absence of abuse of authority. The first question was answered in the negative, the third in the affirmative, and the second by stating that the writ should be dismissed.[79]

The Court, citing the Sing Tuck case said: "'A petition for *habeas corpus* ought not to be entertained unless the court is satisfied that the petitioner can make out at least a prima facie case.' This petition should have been denied on this ground irrespective of what more we have to say because it alleged nothing except citizenship. It disclosed neither abuse of authority nor the existence of evidence not laid before the Secretary. It did not even set forth that evidence or allege its effect."

While it may truly be said, on the one hand, that the act

[77]198 U. S. 253, 49 Law Ed. 1040.
[78]208 U. S. 8, 52 Law Ed. 369.
[79]Reporter's Statement.

of 1894 applies only to aliens, it is equally true that the act applies to all aliens irrespective of the ground on which such aliens may allege the right to enter; and if it be true that to refuse admission to a person alleging that he is an American citizen may in fact constitute banishment in the particular case, it is equally true that in granting a judicial hearing to any person claiming citizenship in the United States, such person may as a matter of fact be an alien, and the provision of the statute would thereby be flatly disregarded. It is of course undeniable that if the person seeking admission is a citizen of this country, the officer is without jurisdiction to exclude him from admission, or even to detain him for examination with knowledge that he is *in fact such citizen.* But it is equally undeniable that this absence of jurisdiction cannot be held to exist as a proven fact, until the fact of citizenship is determined. If the contrary is assumed—that until a person seeking admission is proven an alien the immigration authorities have no jurisdiction at all—then the very fact of granting the applicant the hearing required by law would be dependent for its validity on the eventual finding that he was an alien. Had the law provided for a preliminary hearing by some special tribunal for the establishment of the jurisdictional fact, the case would be otherwise; no such provision existing, however, the fact of alienage is necessarily left to the determination of the departmental officers whose decision is by law made final as to the right of the alien to enter under any law or treaty. Whether or not a given law or treaty is applicable to an alien or any class of aliens is a question for the Courts, not the administrative officers, to decide.[80] But it may be said if the courts can decide whether an act or treaty is applicable to a given alien or any special class of aliens, with all the more reason have they jurisdiction to point out that no act or treaty can possibly apply to an Ameri-

[80]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

can citizen, and to release him on *habeas corpus* on that ground. No court or departmental officer has ever had the temerity to deny the truth of this proposition, and certainly the Ju Toy[81] case cannot be cited as an authority against it. The facts before the Supreme Court in that case were simply that a person had presented himself to the immigration authorities seeking admission into this country on the alleged ground of American citizenship; that in the exercise of the powers conferred on those officers by Congress they found that this person was an alien and a Chinese alien to boot, and consequently detained him for deportation on the ground that he did not belong to a class entitled to enter the United States; and that the applicant, in spite of the administrative finding of fact sought judicial relief in *habeas corpus* stating in his petition as the sole ground for such relief that he was a citizen of this country, thereby requesting the Court in effect to re-examine the facts on which the adverse decision was based, and to thereby exercise a power which had been taken away from the courts by the Act of 1894. The Supreme Court, being bound to follow the provisions of that act, dismissed the writ and found that the petitioner was detained under due process.

It may still be urged that to grant the writ and review the facts in this case and similar cases would be to violate the Act of 1894 is to beg the question, since that act was confined in its application to aliens. But the argument overlooks the suggestion that no person can be heard to say that the provisions of that or any other act do not apply to him unless he proves, in the method provided by law, that he is not within its operation. The only forum provided by the laws of the United States in which this fact is susceptible of proof in the case of persons seeking admission into this country is the administrative forum of the Department of Commerce and Labor. It can be shown in no other

[81]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

way. It is true that the jurisdiction of officers of that department depends on whether or not the person is seeking admission under any law or treaty, that whether or not a given individual is in fact seeking admission under such law or treaty is a judicial question, and that, if a citizen seeks admission it is not by virtue of any law or treaty. But the question of the applicant's personal status is one of fact which must necessarily be decided before the supplemental question of law as to whether persons similarly situated seek admission under any law or treaty can come up. The Gonzales case[82] did no more than to decide that the executive officer's conclusion of law that a Porto Rican citizen was an alien, for the purpose of the Immigration Act, was incorrect—it did not question the correctness of his finding of fact that the applicant was a Porto Rican.

In the case of Chin Yow vs. United States[83] the petitioner was excluded from admission by the commissioner of immigration, and sought relief in *habeas corpus* on the ground that he was a citizen of the United States, and on the further ground that he was denied a fair hearing. So far as the allegation of citizenship goes the case was within the Ju Toy[84] case, and, like that case would, on that ground alone, have been subject to dismissal for want of jurisdiction. With regard to the jurisdiction of the district court based on the allegation of lack of a fair hearing the Supreme Court said: "If the petitioner was not denied a fair opportunity to produce the evidence that he desired, or a fair though summary hearing, the case can proceed no farther. These facts are the foundation of the jurisdiction of the district court, if it has any jurisdiction at all. It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not."

[82]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.
[83]208 U. S. 8, 52 Law Ed. 369.
[84]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

This language must not, however, be construed to mean that the allegation that the petitioner was refused a fair hearing is the only ground on which the courts can assume jurisdiction. The finality of departmental decisions is destroyed by the fact of lack of jurisdiction, as well as by the fact that they are rendered under conditions or in a mode which the statute does not authorize. The Ju Toy Case[85] held, and the Chin Yow[86] decision shows, that the mere allegation of American citizenship does not go to the jurisdiction of departmental officers. When therefore, as in the latter case, beside the allegation of an unfair hearing the only other allegation made is citizenship in the applicant, there being no jurisdictional question to consider, the fact of the unfair hearing is, as the court states, "the foundation of the jurisdiction of the court." This constitutes sufficient ground for judicial review, whether the departmental officers have acted with jurisdiction or without it. Or both grounds together may constitute the ground of the Court's jurisdiction, if, in addition to refusing the applicant a fair hearing, the departmental officers attempt, as was done in the Gonzales case,[87] to exclude a person found by them to be an alien, but who was, nevertheless, not amenable to the Immigration Laws.

In the light of the decisions cited in this section, and particularly of the principles enunciated in the Gonzales, Ju Toy, and Chin Yow cases, the law touching the finality of departmental decisions excluding aliens attempting to enter the United States under any law or treaty may be thus summed up:

The grounds on which the courts may assume jurisdiction in *habeas corpus* proceedings are two: The fact that as a matter of law the alien is not attempting to enter the United States under any municipal law or treaty, and the fact of an unfair hearing, a denial of a hearing, or any

[85]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.
[86]Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369.
[87]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

other arbitrary abuse of power on the part of the immigration officers which results in the denial of a fair hearing. In assuming jurisdiction the courts must accept as absolute and binding such officers' findings of fact, except when the alleged "findings" are not, as a matter of law, supported by any evidence whatsoever—the only ground for the court's assuming jurisdiction even in such a case being the necessarily arbitrary nature of the so-called decision rendered under such circumstances.

In order to give the courts jurisdiction it is sufficient if the petition alleges the fact of the absence of a fair hearing irrespective of the existence or absence of jurisdiction on the part of the executive officer. That allegation standing alone is sufficient to justify judicial review to the extent of determining whether a fair hearing was accorded; if found to have been denied then the Court can pass on the merits. Where the claim is that the petitioner does not come within the operation of the act under color of which he is held for deportation it must be based strictly on the facts as found by the executive officer; and if on those facts as found the Court finds that the petitioner is not within the operation of the statute under color of which he is detained, his release will be ordered.[88] But the claim that the statutes have no application to a given case will not be supported by the mere allegation that the petitioner is a citizen of the United States, when the departmental officer has found otherwise, and cannot be viewed in the light of a jurisdictional question.[89]

[88]Gonzales v. Williams, 192 U. S. 1, 48 Fed. 317; *In re* Nakashima, 160 Fed. 842; *In re* Buchsbaum, 141 Fed. 221; Davies v. Manolis, 179 Fed. 818.

[89]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

CHAPTER V.

EVIDENCE.

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I. In General.

In taking up the subject of evidence in connection with the study of the exclusion and immigration laws, a brief survey of the acts and of the leading cases in which some question of evidence has been submitted to judicial determination suffices to show that, although the cases in which such questions are discussed are fairly numerous, considering the total number of adjudications based on the acts, they present little or nothing that is new or of any

particular interest in the law or rules of evidence. This is due mainly to the fact that the thing to be proven in deportation proceedings is always the same; that is, the right of the defendant to remain in or to enter the United States. The facts necessary to establish this right are few and simple and largely prescribed by statute, and the kind of evidence submitted to support them must necessarily be of the same general nature. Thus, as has been shown, the Chinese laborer arrested under the Act of 1892, as amended, for failure to register, had only to establish the fact that he failed to do so by accident, by sickness, or by some other unavoidable cause, and that he was a resident in the United States prior to the registration period. Although accidents are infinite in variety the mode of proving them is generally of the simplest, necessarily consisting in deportation cases, as in ordinary proceedings, in the physical evidences thereof apparent in the person of the defendant, corroborated by the statements of a sufficient number of credible witnesses of the former, and by the assertions of the defendant coupled with the usual corroboration and proof, to the satisfaction of the presiding officer. The same may be said with regard to establishing the fact of sickness or unavoidable cause. The corroborative facts naturally differ as to time and locality; but the general nature of the evidence must necessarily remain the same.

The extent or kind of the proof to be offered in such cases as the above is not the determinative factor in the final result, for that factor is prescribed by law to be the proof of the facts alleged "to the satisfaction of the judge or commissioner."[1] It has, however, been held that where in deportation proceedings before a District Court on appeal the appellant has asserted American citizenship as the basis of his right to remain the right of the Government to deport or banish cannot be exercised until such

[1]Yee N'Goy v. United States, 116 Fed. 333; United States v. Leung Sam, 114 Fed. 702.

right has been judicially determined in accordance with the usual or ordinary rules of evidence[2] even if not "to the satisfaction of the Commissioner." The proceedings not being criminal in nature, the element of reasonable doubt does not call for consideration in determining whether the judgment shall be a discharge of the defendant, or an order for his deportation. The judge or commissioner must be satisfied—and that is all; and it is at least safe to say that if a reasonable doubt exists in the mind of the presiding officer he will not be satisfied with the proof before him. But, as has already been shown,[3] satisfaction, as the term is used in the act, has a special, although a broad meaning—special in so far as it precludes the amount of proof which would be required to satisfy a mind dominated by arbitrary, obstinate, or unreasoning modes of thought—broad in so far as it requires the proof offered to be such as thoroughly to convince a reasonable and unbiased man of the truth of the representations made on the part of the defendant. Proof of former residence must, in like manner, be made to the satisfaction of the court or commissioner; but in this case the source of at least a portion of such proof must be one credible witness other than Chinese. Whether or not such witness is to be believed is likewise to be determined to the satisfaction of the presiding official.

Under these conditions, and bearing in mind that a judicial review of any given case originating before a commissioner constitutes on appeal a hearing of the facts *de novo,* and further that the facts in any given case must necessarily differ, in degree at least if not so much in kind, from those in any other given case, those who rely on judicial precedent to establish their contention, whatever it may be, have no light task. A search for authoritative precedent among cases determined virtually solely on the facts constitutes no more or less than a search for a prior

[2]Moy Suey v. United States, 147 Fed. 697.
[3]*Supra.*

decision based on a similar or at least closely analogous state of facts. Under these conditions the difficulty, if not the impossibility, of completely covering the subject of evidence in connection with the Chinese exclusion acts without actually setting forth the separate state of facts peculiar to each case considered by the courts on appeal becomes at once apparent. Reference is made advisedly in this connection to the Chinese exclusion laws apart from the immigration acts, for the reason that even before the Act of August 18, 1894, went into effect, the courts showed no inclination, even on *habeas corpus,* to review the decisions of executive officers charged with the execution of the immigration acts when the questions involved were solely questions of fact; and since the passage of the said act it is settled law that administrative decisions will not be reviewed by the courts, on *habeas corpus* or otherwise, except as to errors of law made by the executive officials, or unless the hearing given the applicant for admission is shown to have been unfair and the decision therefore an arbitrary one.

While, therefore, it might be of some practical value to insert in this work a complete digest of all the facts in such cases, together with the judgments rendered therein, it is thought that whatever slight assistance such a compilation might afford in the way of precedent would be offset by the fact that the value of such precedents, small as it always was, is diminishing rather than increasing. This is due to the fact that the vast majority of cases of applicants for admission arising under the exclusion and immigration acts are tried administratively, and are not subject to judicial review, and to the further fact that by sections 20 and 21 of the present immigration Act of February 20, 1907, the Secretary of Commerce and Labor is empowered, when satisfied that an alien has been found in the United States in violation of that act, or that he is subject to deportation under the provisions thereof, or under any law of the United States, to cause such alien

within three years after landing or entry to be deported—the process being strictly administrative in its nature. It is true that the Act of February 20, 1907, provides that the act shall not be construed to repeal, alter, or amend existing laws relating to the admission or exclusion of Chinese persons[4] and that it has been judicially held that the immigration act does not apply to Chinese laborers unlawfully in the United States.[5] The opposite view has, however, been taken by other Federal Courts.[6] Be this as it may, while it is not thought that the power given to the Secretary of Commerce and Labor in Section 21, if in fact it applies to all Chinese persons unlawfully in the United States, would operate to exclude judges or commissioners from the exercise of the powers conferred on them by the Chinese exclusion acts, it would at least tend to reduce in great part the number of those cases over which they at present have jurisdiction; and to this extent diminish the number of cases in which questions of evidence can come up for judicial review.

Procedure under the immigration acts differs somewhat from that prescribed by the Chinese exclusion acts in that the former is in all stages purely administrative, whereas the latter presents features of a strictly administrative character only when the question involved is that of the right of the applicant to enter the United States.[7] Under the immigration acts, the right of the alien to remain is determined by proceedings held under the direction of immigration officers on the authority of a warrant of arrest signed by the Secretary or Assistant Secretary

[4]Sec. 43.

[5]Wong You v. United States, 181 Fed. 313.

[6]Looe Shee v. North, 170 Fed. 566; *Ex parte* Li Dick, 176 Fed. 998; *Ex parte* Wong You, 176 Fed. 933. The Supreme Court of the United States has definitely settled the question by reversing the decision of the Circuit Court of Appeals for the Second Circuit (181 Fed. 313, *supra* n.) in the recent case of United States v. Wong You et al., 223 U. S. 67, 56 Law Ed. ——.

[7]See Chapter on "Deportation Procedure" *post*, p. 614.

of Commerce and Labor as provided by section 21 of the act. Under the Chinese exclusion acts on the other hand the proceedings are quasi-judicial in nature, and are conducted in the first instance by a United States commissioner, and in case of appeal the facts are reviewed *de novo* by the United States judge for the district in which the original hearing was had.

Deportation proceedings under either branch of the law being *sui generis,* the rules of evidence common to ordinary civil and criminal procedure have no application; there are, in other words, no rules setting forth the *manner in which* the prisoner's case is to be presented. But in certain classes of cases to be considered later in connection with the subject of evidence in its application to deportation proceedings under the Chinese exclusion acts, both purely administrative or quasi-judicial, Congress has designated certain specified *facts which* must be shown to exist in order to give the right to return or remain, as well as the persons *by whom* these facts must be sworn to. Where the statutes do not prescribe the nature of the proof to be presented, the alleged right may be sustained by any and all facts at the alien's command—and the presiding officer is in no way limited by law as to the nature or amount of the evidence which he may consider.

The evidence to be presented in deportation proceedings may then be roughly classified as that which is and that which is not prescribed by statute.

II. The Burden of Proof.

A. UNDER THE IMMIGRATION ACT.

Under the Chinese exclusion acts the burden of proving either the right to enter or remain is imposed on the Chinese person by whom the right is claimed. Merchants may enter or remain only by presenting the proofs required whether in the shape of certificates or by showing

the existence of certain facts in the manner prescribed by law. Laborers are entitled to return on the showing prescribed by the statute, and on further proof, if deemed necessary by the immigration officials that the applicant is the person named in the certificate he presents; or to remain only by presenting the evidence of their right to do so whenever the law, as by the Acts of 1892 or 1893, requires such proof. And the burden of proving his right to remain is on any Chinese person—excepting those specially exempted from the provisions of the act or by treaty—who is in the United States. In short, the laws regarding the exclusion or admission of Chinese persons absolutely excludes newcomers of the laboring class, and imposes on those who belong to the exempt classes the burden of proving their exemption; while under the immigration acts, all aliens being entitled to admission except such as belong to certain classes membership in which subjects the alien to expulsion, the burden is, generally speaking, on the Government to prove that a given alien is not entitled to land, or if already landed, to remain.

Since by general intendment, the immigration laws impose the burden of proving the fact of the alien's ineligibility thereunder on the Government, the obligation to prove the contrary can only rest on the foreigner seeking admission, where the law clearly provides that such is the intent. This would naturally appear in the form of a provision made applicable to a specially designated class or classes, stating directly that the burden of proving their exemption is on them, and prescribing special rules of evidence whereby the right to land must be shown to exist.

1. *Evidence Not Prescribed by Statute.*

(A.) Aliens Seeking to Enter the United States.

When the alien lands, say at Ellis Island docks, he forms one of a line of passengers which passes before the desk of the examining inspector to whom that particular

line is assigned. From two to five minutes are, as a rule, devoted to the "line" or "primary" examination of each alien—not to be known as a preliminary examination in the case of those "who may not appear to the examining immigrant inspector to be clearly and beyond a doubt entitled to land." The purpose of this brief examination is to enable the inspector to determine whether or not the particular applicant shall be detained for examination by the board of special inquiry provided by the act. Whether or not the alien shall be detained for this purpose depends wholly on the opinion of the inspector as to his eligibility, based either on the alien's general personal appearance or on the answers with which the former's questions are received. Detention for further examination by the board is not to be considered a detention resulting from a decision to the effect that the alien is within the excluded classes, for the inspector is not authorized by law to render a decision; but the duty to detain is imperatively imposed upon him as the result of the existence of a doubt in his mind, no matter how vague, of the right of the alien to land.

Section 25 provides that the board of special inquiry has the authority to determine whether an alien who has been duly held shall be allowed to land or shall be deported; and all hearings held by its members shall be separate and apart from the public, but they shall keep a complete permanent record of their proceedings, and of all such testimony as shall be produced before them.

There is no provision in the law that in case of doubt as to his eligibility the alien shall at the hearing before the board be under the obligation of dispelling such doubt in the minds of his examiners. The fact that sufficient doubt has existed in the mind of the examining inspector to detain him for examination does not imply the presence of such a doubt in the minds of the members of the board. The law contemplates a full and fair hearing; and so fully has this principle been recognized by the courts that it

has been held that an examining inspector who caused an alien to be held for examination may not, under the law, constitute a member of the board which is to decide on his right to enter.[8]

The real object of the board's examination would seem to be not to determine whether the alien has a right to enter—but whether it is the duty of its members to exclude him under the law. It is true that the act provides that the members shall have the authority to determine whether he shall be allowed to land—but the Supreme Court of the United States has held that the decision of the Board allowing an alien to enter is in no way determinative of that right or of his right to remain as against a subsequent decision of the Secretary of Commerce and Labor denying the right.

The only grounds on which the board may arrive at an excluding decision is by finding as a matter of fact that the alien belongs to a class membership in which bars him from admission under the law. If the board fails to reach such a conclusion or to make such a finding the alien must be considered entitled to land—and herein lies the distinction between the Chinese exclusion acts and the immigration act regarding the burden of proof. The Chinese exclusion acts purport no more to exclude Chinese merchants from their operation than does the immigration act to exclude aliens who are free from the disabilities which operate to exclude. But by imposing on Chinese merchants the obligation of proving their exempt status by means of the certificate of identity the Government was relieved from the obligation of proving that a Chinese person presenting himself for admission was in fact a laborer. The immigration act does not impose the burden of proving the fact of their admissibility on aliens of the exempt class, and, consequently, it devolves upon the Government to prove that the exemption claimed does not in fact exist.

[8]United States v. Redfern, 180 Fed. 500.

But inasmuch as the act imposes no limitation on the methods to be used or the sources on which the board of special inquiry may draw in order to determine whether or not the alien applicant is exempt as claimed, other than that he shall be given a full and fair hearing, any and all facts which may appear to the presiding officials to have any bearing on the issue may be properly drawn upon in order to enable them to reach their conclusion. They must examine all the evidence which the applicant presents;[9] but the question of what weight they shall give to any evidential fact, whether consisting in the physical or mental attitude of the alien himself, his behavior, his statements or those of witnesses appearing in his behalf, is to be determined by them alone.

In certain classes of cases, the exclusion of the alien is necessarily determined on no other principle of evidence than that of *res ipsa loquitur*. This occurs in all cases where the disability found to exist is tuberculosis or a loathsome or dangerous contagious disease, idiocy, imbecility, feeble-mindedness, epilepsy or insanity, or where the alien is found to be and is certified by the examining surgeon as being mentally or physically defective, such mental or physical defect being of such a nature as may affect the ability of the alien to earn a living. Although the subject himself may be said to constitute or provide the evidence on which the excluding decision is based the burden of proof still rests on the Government. To be sure, the proof is at hand in the presence and appearance of the alien, but the burden of discovering and recognizing the evidences of the defect is necessarily assumed by those on whom the law imposes the duty of determining whether or not it exists.

A situation somewhat analogous is presented by persons likely to become public charges, paupers or professional beggars. Persons likely to become public charges be-

[9]United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917; Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369.

cause of some physical or mental defect would generally come within the class of those found to be suffering from some defect which is certified by the examining surgeon as being such as to probably involve their maintenance by the state if allowed to enter. Whether an alien is a pauper, a professional beggar or likely to become a public charge may be in part, at least, inferred from personal appearance aside from physical or mental defects, or from other evidence tending to show that he may well be considered a member of the objectionable classes. Since all relevant facts may be taken into consideration by the members of the board in reaching their conclusion, and since they are the sole judges of whether or not a given fact, even in the face of opposing testimony, is sufficient to warrant an excluding decision, it is plain that the personal appearance and bearing of the applicant may be and often is, of itself, the sole and sufficient ground of his rejection, irrespective of other and oral testimony to the contrary.[10]

Courts Generally Without Power to Review the Evidence.

In the case of United States *ex rel.* Barlin v. Rodgers,[11] it was claimed that there was no testimony or insufficient testimony to warrant the findings of the inspectors. The court after commenting on the fact that the record showed that testimony of witnesses summoned on behalf of the alien was heard said: "But more than all, the alien himself was present and subjected to personal examination by the inspectors..... The printed record of the answers made by the alien and witnesses.....does not fairly present the case..... The important factor of the impression made upon the inspectors by the personal appearance of and the conversation had with the aliens is necessarily absent from the record. We can well conceive that such

[10]United States *ex rel.* Tommaso Buccino and Salvatore Buccino, 190 Fed. 897.

[11]191 Fed. 790.

an impression would have a most important bearing upon the determination reached by the inspectors in those cases in which the alien was debarred from entry, on the ground that he was likely to become a public charge or as having been certified by the examining surgeon as mentally or physically defective in such a way as to affect his ability to earn a living. We are not at liberty to set aside such determination, because on the record we think we might or would have reached a different conclusion. We have only to find that the inspectors acted within the scope of their authority and that the integrity of their proceedings is not impeached."

While it is true that the examining officers must consider all the testimony offered to rebut the unfavorable presumption raised by the personal appearance or other characteristics of the applicant this does not mean that, having once considered the evidence thus offered, they are not at liberty to conclude that it is lacking in sufficient probative value to affect their decision, or that it has no probative force at all. There is a vast difference between rejecting statements put forward to support an alleged state of facts, and disregarding them in the sense of reaching the conclusion that they have no weight when put forward as evidence in a given case.

When the Courts Will Review the Evidence.

Touching the subject of judicial review of evidence presented in proceedings purely administrative, attention may be called at this stage to one exception to the rule that the evidence thus given is not reviewable by the courts. Grounds for this exception exist where it appears that the evidence given could lead to only one conclusion on the part of a fair-minded man,[12] or where the evidence bearing on the right of the alien to enter is so conclusive of that right as to make an adverse departmental ruling

[12] *Ex parte* Petterson, 166 Fed. 536.

arbitrary and unjust.[13] But the fact that the courts will exercise this power of review in such cases is not based on any general right to examine the evidence taken in proceedings before departmental officers, but on the ground that the findings made do not constitute a decision as that word is used in the Act of August 18, 1894; in other words, that a decision is required by the statute, and that a mere arbitrary expression of opinion, not having in the facts presented to the officer expressing it any basis or justification whatever, is sufficient to show that the hearing itself was not conducted by the officer with a fair and unbiased mind. Such cases are necessarily rare, and the courts will be extremely slow to assume jurisdiction on this ground where the only evidence of unfairness is the conflict between the finding and the facts presented at the hearing.

(B.) Aliens Arrested Within the Country.

In proceedings brought to deport aliens arrested within the country the procedure differs somewhat from that which characterizes hearings before boards of special inquiry, but the burden of proof is naturally upon the Government. The law provides merely that certain classes of aliens "shall upon the warrant of the Secretary of Commerce and Labor be taken into custody and deported" in case the latter "shall be satisfied that (he) has been found in the United States in violation of this act, or that he is subject to deportation, etc."[14] But it is provided by Rule 22 that "officers shall make thorough investigation of all cases when they are credibly informed or have reason to believe that a specified alien in the United States is subject to arrest and deportation on warrant; that the application for the warrant must state facts bringing the alien within a class subject to deportation after entry; that upon receipt of a warrant of arrest the

[13] *Ex parte* Jong Jun Hong, 157 Fed. 447.

[14] Sections 20 and 21 Act 1907.

alien shall be taken before the appropriate immigration officials and granted a hearing to enable him to show cause why he should not be deported; and that during the course of the hearing the alien shall be allowed to inspect the warrant and *all the evidence on which it was issued,* to have counsel, and by him to make a copy of the minutes so far as it has proceeded, and to offer evidence to meet any evidence theretofore or thereafter presented by the Government. And at the close of the hearing, the full record is sent to the Bureau of Immigration in order that the Secretary of Commerce and Labor may decide whether the proceedings are such as to justify the issuance of a warrant of deportation. The burden of making out a *prima facie* case is thus clearly upon the Government.

2. *Evidence Prescribed by Statute.*

(A.) Assisted Aliens.

Any alien whose ticket or passage is paid for with the money of another, or who is assisted by others to come must, in order to prove his right to enter "affirmatively and satisfactorily show" that he does not belong to any of the excluded classes and that his ticket or passage was not paid for by any corporation, association, society, municipality or foreign government either directly or indirectly. In other words, the payment of an alien's passage or ticket by another, or the fact that he is assisted by others to come, raises a presumption against his admissibility which he must rebut by proof of the facts prescribed by the act.

(B.) Japanese and Korean Laborers.

Section 1 of the Act provides that whenever the President shall be satisfied that passports issued by any foreign government to its citizens to go to any country other than the United States or to its insular possessions or to the

Canal Zone are being used for the purpose of enabling holders to come to this country to the detriment of labor conditions here, he may refuse to permit such citizens to enter this country from such other country or its outlying possessions or territory subject to its sovereignty. On March 14, 1907, it was announced by presidential proclamation that the President was satisfied that passports were being issued to citizens of Japan and Korea for that purpose, that Japanese and Korean laborers, skilled and unskilled, who had secured passports to go to Mexico, Canada, and Hawaii were to be refused admission to this country, and that the Secretary of Commerce and Labor was empowered to take the necessary steps to enforce the prohibition. Thereupon the Department adopted the following rule: That if a Japanese or Korean laborer applies for admission and presents no passport it shall be presumed (1) that he did not possess when he departed from Japan or Korea a passport enabling him to come to the United States, and (2) that he did possess at that time a passport limited to Mexico, Canada or Hawaii. It was further provided that "if the applicant presents a passport limited to Mexico, Canada or Hawaii but claims that he is not a laborer, skilled or unskilled, proof of such claim shall be required." The rule providing the double presumption was subjected to severe criticism and pronounced beyond the power of the Commissioner General of Immigration to provide in the case of United States v. Hemet.[15] The second provision imposes on the Japanese or Korean applicant the burden of proving that he is not a laborer, skilled or unskilled, within the meaning of the act. This is a much less drastic provision than that which obtains under the exclusion statutes, the distinction being that under this rule the alien is not restricted as to the manner in which he shall prove his exemption from the prohibition of the proclamation, whereas under the exclusion acts the

[15] 156 Fed. 285.

exempt status at the time of entry can only be shown by at least *prima facie* proof of its existence in the mode prescribed by law to the exclusion of all other modes of proof.

B. UNDER THE CHINESE EXCLUSION ACTS.

The evidence on which Chinese persons can establish their right to enter or to remain in the United States has, almost from the beginning of legislation having for its object the exclusion from this country of subjects of the Chinese Empire, been prescribed, limited and regulated by statute. The certificates of identity prescribed by section 6 of the Act of 1882, commonly called "Section 6 Certificates," were issued for the sole purpose of constituting evidence of the right of persons other than laborers to enter the United States; and the certificates prescribed by sections 4 and 5 of said act, commonly called "return certificates," were issued as evidence on which laborers leaving the United States might be permitted to re-enter. The latter, issued by the United States Government, constituted what appeared at the time of the passage of the act to be the best available method of identifying the laborers on their prospective return; and the former, issued by the Chinese government, constituted no more or less than the averment on the part of that government that the holders belonged to some one of the exempted classes. The ineffectiveness of this measure to put a stop to the continued influx of Chinese laborers gave rise to the amendatory Act of 1884, which provided that the "section 6 certificate" "shall be the sole evidence permissible on the part of the person so producing the same to establish a right of entry into the United States; but said certificate may be controverted, and the facts therein stated disproved by the United States authorities."

This act was followed by the Act of September 13, 1888, at the time of the passage of which a proposed treaty with China was under negotiation. The Chinese

government failing to ratify the treaty, the Act of October 1, 1888, was passed, which specifically provided that no Chinese laborer should be allowed to return to the United States, whether or not provided with the return certificate issued under the Act of 1882, as amended by that of 1884. This act was, however, repealed by the treaty with China of December 8, 1894,[16] and succeeded by the Act of May 5, 1892, subsequently amended by that of November 3, 1893.[17] The Act of 1892 continued in force all laws prohibiting and regulating the coming into this country of Chinese persons. Among these acts were such sections of the Act of September 13, 1888, as were not dependent for their existence on the ratification of the treaty of 1894 which China failed to ratify. These sections—subsequently re-enacted by the Acts of 1902 and 1904—carried, among others, provisions permitting the return of Chinese laborers to the United States within the period of one year from departure therefrom on the production by them of a certificate of return issued by the proper Chinese inspector in the United States on proof that such laborers had a lawful wife or child or parent in the United States or property therein of the value of $1,000.00 or debts of like amount due them and pending settlement—which certificate was to constitute the sole evidence of their right to return.

The Act of 1892 was not limited to continuing in force laws prescribing the evidence by which laborers and persons other than laborers of Chinese nationality may prove their right to return to or enter the United States. Its main purpose was to provide for the registration of Chinese laborers in the United States; such registration to be completed within one year after the passage thereof. The time wherein registration might be completed was extended in section 6 of the amendatory Act of November 3, 1893, to six months after the passage of the act, and

[16] 21 Op. Atty.-Gen., 1894.

[17] See Appendix.

provided further that no Chinese person heretofore convicted in any court of the states or territories of the United States of a felony should be permitted to avail himself of the opportunity offered to law-abiding Chinese laborers.

In addition to prescribing the evidence by which a Chinese laborer was obliged by the above-cited section to establish his right to remain, the following provision, setting out the method by which Chinese persons returning to the United States must establish the mercantile status on which their right to enter was based, appears in section 2 of said amendatory act: "He shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing."

These provisions were at once strongly attacked on the ground that their effect was to place the burden of proving the right to remain on Chinese who had not registered as required by the act and that they were further illegal in that they designated the only kind of evidence by which the right could be proven, in the absence of registration. But it was held that the obligation imposed by the act on Chinese persons to prove affirmatively their right to remain in the United States was consistent with the principle that every legislature has the inherent power to prescribe the evidence which shall be received, as well as the effect thereof in its courts, and that the act was, therefore constitutional.[18] This reasoning applies with equal force to section 2 of the Act of 1893, requiring that the mercantile status of returning Chinese shall be proven

[18]Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

by two reputable witnesses other than Chinese.[19] The right of Congress to put the burden of proof on the alien in such cases is no longer open to controversy;[20] and that burden was not removed by the provisions of section 1 of the Act of April 29, 1902, which provide that all laws now in force prohibiting and regulating the coming of Chinese persons and persons of Chinese descent into the United States, and the residence of such persons therein, are re-enacted, extended and continued so far as the same are not inconsistent with treaty obligations.[21]

The burden of proving their right to enter or remain is upon all Chinese seeking to exercise such right.[22] Since the exclusion acts provide that even members of the exempt classes must at the time of entry furnish the evidence required by law of their right to enter, the absence of such evidence in the hands of an applicant, coming here for the first time creates a presumption—which the law has made absolute by prohibiting the introduction of any evidence other than that provided by the certificate—that he is not an exempt under the law. Again, where the law provides that Chinese laborers already within the country shall take out certificates of registration, the failure of one of the laboring class to have the certificate in his possession raises the presumption that he was not lawfully in the country during the registration period. But in this case, the act provides that the absence of the certificate may be satisfactorily accounted for on the proof of certain facts under the conditions prescribed by law. And the act of 1892 provides that any Chinese per-

[19] *Ibid.*

[20] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Fong You Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; United States v. How Way, and three similar cases, 156 Fed. 247; Low Foon Yin v. United States, 145 Fed. 791; United States v. Sing Lee, 125 Fed. 627; United States v. Lee Huen, 118 Fed. 442; *In re* Sing Lee, 54 Fed. 334.

[21] Tom Hong v. United States, 193 U. S. 517, 48 Law Ed. 772; Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.

[22] Fong Mey Yuk v. United States, 113 Fed. 898.

son arrested under its provisions shall be adjudged to be unlawfully in the United States unless he establishes the contrary to the satisfaction of the commissioner—thereby in so many words imposing upon the prisoner the burden of proving that his presence here is legal.

The burden thus imposed is the result of the general purport of the law, and is in no way to be confused with the additional obligation which lies upon Chinese persons to prove the existence of certain specified facts by the testimony of members of specified classes of witnesses in order to establish the right claimed. This general obligation to prove the right to remain or to enter is constant, irrespective of whether the act prescribes in certain cases and in others fails to prescribe the establishment of certain subsidiary facts through witnesses specially designated, or by means of documentary proof in the form of certificates of identity, residence or return.

Here, as in the immigration act, the evidence naturally falls into two classes: that prescribed by statute and that not prescribed by statute.

If a Chinese person seeks admission on the ground of membership in any one of the exempt classes not only must he show it but his proof must be made by one particular method, viz: by a "section 6" certificate;[23] if a laborer, he must show he is returning to resume a lawful residence in the United States, and here again the proof must be of a specified nature, viz: a "return certificate;"[24] if a merchant returning to a domicile in the United States he must show by the testimony of two credible witnesses other than Chinese that he is entitled to enter on said grounds;[25] and if the applicant claims to be the wife or minor child of a citizen or the wife or minor child of an exempt the status of the husband or father must be proved in the way required by the law, and the relation-

[23]Section 6, Act 1882-1884.

[24]Section 7, Act 1888.

[25]Section 2, Act of 1893; Rule 15, Chinese Regulations—append.

ship claimed must be established affirmatively[26]—all of the rules cited being based on the general purport and spirit of the law.

Regarding a Chinese person arrested within the country: If a laborer he must produce the certificate of residence prescribed by the Act of 1893 or establish that his failure to secure it was due to unavoidable cause and that he was lawfully in the country prior to the passage of that act, the latter by the testimony of at least one witness other than Chinese.[27]

1. *Evidence Not Prescribed by Statute.*

(A.) Of Citizenship of Persons of Chinese Descent.

Where the claim is that the applicant is a citizen of the United States it must be established by ordinary affirmative evidence which, in order to prevail, must satisfy the appropriate official of the truth of the facts alleged.[28]

The acquisition of citizenship by persons of Chinese descent is possible only by birth in the United States while subject to the jurisdiction thereof.[29] The naturalization statutes, in designating what persons could be naturalized, limited the description to free white persons and persons of African descent. Inasmuch as the power to naturalize is vested exclusively in Congress,[30] and Congress has thus limited the persons who can be naturalized, it has been held that Chinese persons, and Mongolians generally, cannot acquire citizenship by naturalization.[31]

The Act of 1884 specially forbade the further naturalization of Chinese by any of the courts of the United

[26]Rule 9, Chinese Regulations.

[27]Section 6, Act of 1892, as amended by section 1, Act of 1893.

[28]Rule 16, Chinese Regulations, Append.

[29]United States v. Wong Kim Ark, 169 U. S. 649, 42 Law Ed. 890.

[30]*Ibid.*

[31]United States v. Wong Kim Ark, *supra;* Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

States;[32] but the use of the word "further" cannot be construed to imply that the naturalization of Chinese by such courts prior to the passage of the act was valid in the face of the positive limitation as to race contained in the naturalization laws. Its insertion in the provision can hardly be given more significance than is to be derived from the fact that prior to the time of the passage of the act of which it forms a part the United States courts had, in several instances conferred the oath of citizenship and allegiance on Chinese persons in the manner and form prescribed by the naturalization laws. The first section of the fourteenth amendment of the Constitution was construed by the Supreme Court in the Wong Kim Ark case to mean that birth occurring within the territorial limits of the United States of Chinese parents residing here at the time was sufficient to impose on the person so born the character of a citizen of the United States. But the court held that the only method by which Chinese persons can acquire United States citizenship is by virtue of such birth. Therefore, proof of citizenship in Chinese deportation cases means no more or less than proof of birth in the United States.

In the case of Chin Bak Kan[33] it was claimed by the defendant in deportation proceedings that he was a citizen of the United States, and that, inasmuch as the Chinese exclusion acts gave the power to commissioners to pass upon the right of Chinese persons to remain in the United States, it conferred on them no jurisdiction over American citizens. But the court said: "It is thus settled that the mere claim of citizenship on the part of the defendant in deportation proceedings cannot oust the officers presiding thereat of their jurisdiction to pass on the right of the defendant claiming citizenship to remain in the United States, and furthermore that the burden of proof

[32]Section 14; Fong Yue Ting v. United States, *supra; In re* Gee Hop, 71 Fed. 274; 21 Op. Atty. Gen. 37; 21 Op. Atty. Gen. 581.

[33]186 U. S. 193, 46 Law Ed. 1121.

of establishing this fact placed upon Chinese by the Act of 1892 is not removed by the nature of the contention. This question is now so firmly settled as to be no longer open to controversy." [34] But it has been held that where the physical appearance of the defendant is such that the court cannot be sure that he is a Chinaman the burden rests upon the Government to prove his Chinese nationality.[35]

The *nature* of the evidence required is not restricted or designated by statute, as is that required for former residence or for proving prior mercantile status by the Act of 1892, as amended. The place of birth of persons of Chinese descent may be proven in deportation proceedings by Chinese or other witnesses, like any other fact for the proof of which no particular kind of evidence is provided for by statute.[36]

(1.) Sufficiency of Evidence to Establish Fact of Birth in the United States.

Evidence uncontradicted, direct, positive and circumstantial of the defendant's birth in this country is sufficient to show his right to remain by establishing the fact of nativity,[37] and the effect of evidence marked by such qualities is not lightly to be overthrown. Thus, when a Chinese person claims to have been born in the United States and never to have left the country, and when he and other unimpeached witnesses testify to this without contradiction, and other persons who have known him for years testify to his truthfulness and good character, such

[34]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121; Yee Ging v. United States, 190 Fed. 270; Lim Sam v. United States, 189 Fed. 534; United States v. Too Toy, 185 Fed. 839; Kum Sue v. United States, 179 Fed. 370; Yee King v. United States, 179 Fed. 368; United States v. How Way, 156 Fed. 247; *In re* Lam Jung Sing, 150 Fed. 608.

[35]Chee Cue Beng v. United States, 184 Fed. 383; United States v. Louie Lee, 184 Fed. 651; and see Moy Suey v. United States, 147 Fed. 697.

[36]United States v. Lee Seick, 100 Fed. 398.

[37]United States v. Wong Lung, 103 Fed. 794; and see 169 Fed. 565.

evidence will not be rebutted by the testimony of one American witness tending to show that the defendant had previously testified that he was born in China;[38] and so, too, where the witnesses' story is candid and consistent and they are unimpeached.[39] It has been lately held that when apparent inconsistencies exist an effort should be made if possible to harmonize them rather than to impute a corrupt motive to one of the witnesses.[40] Again, the statement of witnesses of vouched for veracity who swear that the defendant was born in the United States and left for China when young, giving the name of the street where his father lived and where petitioner was born, and the further statement of a witness that the latter saw the petitioner in China after he left the United States and identified him—all of which testimony was positively and apparently truthfully given, is sufficient to prove that the defendant was a United States citizen.[41] And when the Chinese testimony shows that defendants were born in the United States, and this testimony is corroborated by that of credible white witnesses to the effect that they were personally acquainted with the defendants when young, it is sufficient to prove their lawful presence in the United States.[42] Again, where defendant shows a regular certificate on which is based his right to be in the United States, testifies that he is the person named therein, and is corroborated by other Chinese witnesses, he makes out a strong *prima facie* case, which is further strengthened by the fact that his story is pursuasive; and the effect of this evidence is not rebutted by the fact that a certificate bearing the same number was passed through another immigration office under suspicious circumstances.[43]

On the other hand, it has been held that where the testi-

[38]United States v. Jhu Why, 175 Fed. 630.
[39]Mar Poy v. United States, 189 Fed. 288.
[40]Lim Sam v. United States, 189 Fed. 534.
[41]Pang Sho Yin v. United States, 154 Fed. 660.
[42]United States v. Lee Wing, 136 Fed. 701.
[43]United States v. Wong Ock Hong, 179 Fed. 1004.

mony of the defendant, several other witnesses, and one white witness tended to show that he was born in the United States, the fact that he was shown to have made a previous signed statement that he was born in China, coupled with the fact that the judge was not favorably impressed with the white witnesses' manner of testifying, is insufficient to prove the fact of birth in the United States.[44] It is apparent that in the face of such serious discrepancies in the testimony on the vital point at issue, there is nothing left to do but deport—particularly when the evidence as to birth in China is shown positively to have come originally from the defendant's own lips;[45] and such discrepancies are not to be explained away by trivial excuses, such as that when the impeaching statement was made the defendant was dazed with seasickness.[46]

As the allegation of citizenship of a Chinese person necessarily includes the feature of residence at some time or other in the United States, and residence in turn implies at least some knowledge of this country and its language, the fact that a returning Chinese person paid his head tax at the port of entry, fails to submit disinterested evidence of previous residence in the United States for twenty years, was unfamiliar with the English language, and had no acquaintance with the environments in which it was claimed he had resided for twenty years, was held insufficient to establish the fact of birth in this country.[47] The mere fact that a witness testifying as to birth of defendant in the United States alleges that defendant was born at a certain time and place, unsupported by further details concerning the facts already stated will, naturally,

[44]United States v. Wong Du Bow, 133 Fed. 326.

[45]Yee Ngoy v. United States, 116 Fed. 333; Lee Ah Yin v. United States, 116 Fed. 614.

[46]Chew Hing v. United States, 133 Fed. 227; Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.

[47]United States v. Leung Sam, 114 Fed. 702; see also Lee Sing Far v. United States, 94 Fed. 834; *In re* Wong Lin, 1 U. S. D. Ct. Hawaii 44; and see United States v. Cut Yong, Vol. I, *ibid*, p. 104.

be inconclusive as to the claim of citizenship;[48] and the corroboration of the alleged fact of birth by the hearsay testimony of Chinese witnesses who have seen defendant but a few times is likewise held insufficient to prove his citizenship.[49]

Uncontradicted Testimony.

That the testimony given by defendant and his witnesses is uncontradicted does not necessarily prove the fact at issue.[50] That it is the nature and credibility of the testimony given and not the simple fact of failure on the part of the Government to contradict it which should determine the result is clear, since the burden of proof being put by law on the alien, the exempt status which he claims must be established as required by statute. It may be that the facts which he alleged, standing alone, do not satisfy the presiding officer of the truth of the ultimate facts to be proven, in other words fail to constitute a *prima facie* case. Under these conditions it cannot avail him that his insufficient statement is uncontradicted. The point is that it is not corroborated; a fact often of itself at times sufficient to justify an excluding decision.[51] Again, it is possible for designing aliens to submit alleged evidence of birth in the United States of a character so remote in time and place as to make actual contradiction of the specific facts alleged an impossibility as far as the Government is concerned. The true test is, then, the nature and credibility of the evidence irrespective of the fact of contradiction. Thus, when the evidence of a Chinese person seeking admission to the United States on the ground of American citizenship, which although unimpeached in any way is in itself inherently improbable, the

[48] United States v. Lee Huen, 118 Fed. 442.
[49] Gee Fook Sing v. United States, 49 Fed. 146.
[50] *In re* Jew Wong Low, 91 Fed. 240.
[51] *In re* Louie You, 97 Fed. 580.

general rule that uncontradicted evidence should control the decision of the court should not apply.[52]

Aside from the class necessarily excluded from the operation of the exclusion and immigration acts by virtue of citizenship in the United States, are Chinese merchants, students, and others allowed by treaty or statutes relating to the admission of Chinese, and other aliens not of that nationality whose admission into the United States is not prohibited by the acts on immigration. As in the case with Chinese who claim the right to enter or remain on the ground of American citizenship, the burden of proof is on all Chinese except those coming here in a diplomatic capacity together with their suites and servants.[53] Similarly in the cases of all Chinese defendants in deportation proceedings, uncontradicted evidence is not binding on the court,[54] even though defendant's claim is supported by as many as three reputable Chinese merchants whose testimony is unimpeached in any way;[55] and here, too, the fact that the evidence is of itself of such a nature as to be incontrovertible by the Government constitutes no objection to the deportation of the defendant.[56]

(B.) Proof of Marital or Filial Relationship.

If the claim to admission is that the applicant is the wife or minor child of a person of Chinese descent who is

[52]Quock Ting v. United States, 140 U. S. 417, 35 Law Ed. 501.

[53]Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Fong You Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; United States v. Chin Ken, 183 Fed. 332; United States v. Yee Gee You, 152 Fed. 157; Low Foon Yin v. United States, 145 Fed. 791; Yee Yuen v. United States, 133 Fed. 222; Lee Yue v. United States, 133 Fed. 45; United States v. Ling Lee, 125 Fed. 627; United States v. Lee Huen, 118 Fed. 442; United States v. Leung Sam, 114 Fed. 702; United States v. Chun Hoy, 111 Fed. 899; United States v. Lung Hong, 105 Fed. 188.

[54]United States v. Lee Huen, 118 Fed. 442; Quong Sue v. United States, 116 Fed. 316; Lee Sing Far v. United States, 94 Fed. 834.

[55]Woey Ho v. United States, 109 Fed. 888.

[56]Kum Sue v. United States, 179 Fed. 370.

a citizen of the United States or of a member of the exempt classes the fact of such relationship must be proven in the ordinary manner to the satisfaction of the inspecting officers; but, of course, the authorities must be satisfied that the husband or father is fully qualified to enter or remain in this country.[57]

(C.) Proof of Prior Mercantile Status During Registration Period.[58]

As before pointed out the Act of 1892, as amended by that of 1893 provides that as to both Chinese merchants and laborers the evidence of witnesses other than Chinese is required to prove as to the first their right to return to the United States, and as to the second their right to remain therein. The provisions as to registration therein contained are obligatory on laborers only, but any Chinese person other than a laborer having the right to be and remain in the United States was thereby privileged to request a certificate of registration as evidence of such right.[59] While, therefore, the right of a Chinese laborer to remain in the United States could, after the passage of the act as amended, be proved in the absence of the certificate only as provided by that act, to wit, by proof of good reason why he had not obtained a certificate and by further proof of residence in the United States prior to May 5, 1892, by at least one credible witness other than Chinese, the last-named limitation is not prescribed as a mode of proving the mercantile status of a Chinese person whose right to remain has been questioned in deportation proceedings. Thus it has been held that the fact that a Chinese person has been engaged in mercantile pursuits may be proven by Chinese witnesses.[60] But where the right to enter the United States is based on the mercan-

[57]See Chinese Regulations, Rule 9, Append.

[58]See *post*, pp. 584, 587.

[59]Section 6.

[60]United States v. Louie Yuen, 128 Fed. 522.

tile status, and inasmuch as the Act of 1893 in its second section provides that this status shall be established by the testimony of two credible white witnesses, the provisions of the statute must be strictly followed, and in the absence of such evidence, other proof whereby the mercantile status is sought to be established is insufficient.[61] Of course, where the right to remain in the United States is the question at issue, the testimony of white witnesses, although not required by statute, is admissible as well as often desirable. Thus, where the testimony showed without contradiction and by disinterested witnesses other than Chinese that the defendants had been in the United States from ten to thirty years, that for four years (1891-1895) they had carried on a Chinese grocery known by a firm title, had bought and sold groceries, and had kept books of account under articles of partnership, this was held sufficient to prove their mercantile status;[62] and again, Chinese testimony that defendants were merchants in the United States, when corroborated by the testimony of credible white witnesses that the latter had known defendants as the children of persons commonly known as and reputed to be Chinese merchants, their lawful presence in this country was held to be proven.[63]

The question of whether the statutory rules of evidence prescribed by the act apply to cases of Chinese persons who, since the registration period have lost their mercantile status and have become laborers or who are merchants at the time of their arrest subsequent to the expiration of the registration period, although they were laborers during that period, will be more fully considered in the section entitled "Evidence available in the absence of certificate." [64]

[61] *In re* Lung, also *In re* Yue Soon, 61 Fed. 641.
[62] Tom Hong v. United States, 193 U. S. 517, 48 Law Ed. 772.
[63] United States v. Lee Wing, 136 Fed. 701.
[64] *Post* p. 584, 587.

2. *Evidence Prescribed by Statute.*

(A.) In General.

This evidence consists of

(1) Documentary proof in the form of certificates of entry issued under section 6 of the Act of 1882 as amended by that of 1884 to members of the exempt classes of Chinese coming to the United States for the first time, and commonly known as section 6 certificates; certificates of return provided by section 7 of the Act of September 13, 1888, to be issued to Chinese laborers lawfully in this country desirous of leaving it for a temporary visit to China; and certificates of registration or residence provided by the Act of May 6, 1882, as amended by that of November 3, 1893, issued to Chinese laborers already in the country in order to constitute permanent and definite proof of their right to remain; and finally the certificates prescribed in the Treaty of 1894.

(2) Proof by testimony, other than that contained in certificates, of designated facts coming from persons of a designated class, such as the proof by at least one credible witness other than Chinese of prior residence in this country (required by section 6 of the Act of 1892 as amended); of all laborers found without the certificate of registration prescribed by that act; and proof of prior mercantile status in this country by two credible witnesses other than Chinese required of Chinese persons seeking admission on the claim of having been formerly engaged in this country as merchants.

(B.) Certificates—As Evidence of the Right of Holder to Enter or Remain.

Certificates of identity and certificates of registration differ as much with regard to their evidential effect as to the rights which they confer on their respective holders as they do with regard to the purposes for which they were issued.

(1.) "Section 6" Certificates.

The "section 6 certificates" and the "return certificates" issued first under the Act of 1882 were intended, the first for the purpose of identifying Chinese persons of the exempt classes on leaving China for the United States in order that on their arrival at the ports of this country they might be identified as belonging to those classes; the second for the purpose of identifying on their return Chinese laborers leaving the United States temporarily *animo revertendi.* By the Act of 1884 it was provided[65] that the certificate of identity should be the sole evidence whereby the holders thereof might establish their right of entry into the United States; but said certificate might be controverted and the facts therein stated disproved by the United States authorities.[66] It was also provided that the return certificate of the outgoing laborer was to constitute on return the only evidence of his right of reentry. The Supreme Court held, however, that the Act of 1882 as amended was not applicable to Chinese laborers who were living in the United States on March 17, 1880, the date of the ratification of the treaty with China, (whereby it was first agreed that the United States should restrict the immigration of Chinese laborers) and who had left before the passage of the Act of May 6, 1882, and remained out of the United States until after July 5, 1884.[67] This Supreme Court decision was followed by another denying the application of the evidential effect of the lack of the certificate to Chinese laborers who left the United States before the Act of July 5, 1884 was passed.[68] Nor does the "section 6 certificate" of identity constitute the only evidence on which the wives and children of Chinese merchants commercially

[65]See Appendix.

[66]Section 6.

[67]Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770; United States v. Chu Chee, 93 Fed. 797; *In re* Chin A On, 18 Fed. 506.

[68]United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591.

domiciled in the United States can base their right to enter,[69] in the sense at least that they shall not be allowed to prove the right in any other way; particularly in view of the fact that such persons were not specifically designated in the Treaty of 1880 as members of the privileged classes, the treaty being construed to mean that the right to enter guaranteed thereby to members of the exempt classes must necessarily include the right of their wives and minor children to participate in the privilege.[70]

(2.) Laborer's "Return" Certificate.

Section 7 of the Act of September 13, 1888, provides for the temporary departure and return, under conditions, of Chinese laborers; and this right was specially confirmed by Article II of the treaty of December 8, 1894. The act provides that such laborers shall be given a return certificate, "which shall be the sole evidence given to such person of his right to return," but that if it "be transferred it shall become void and the person to whom it was given shall forfeit his right to return to the United States," and that no Chinese laborer shall be permitted to re-enter the United States without producing the return certificate to the proper officer.

Thus it is settled law to-day that certificates of return and certificates of identity constitute the sole evidence of the right of the holder to re-enter, or enter the United States for the first time,[71] and that the absence thereof in hands of the applicant in either case renders him liable to deportation.[72] It is equally well settled that such certificates constitute only *prima facie* evidence of the holder's

[69]United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 544.

[70]*Ibid.*

[71]Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503; United States v. Pin Kwan, 100 Fed. 609; United States v. Chu Chee, 93 Fed. 797; *In re* Wo Tai Li, 48 Fed. 668; Case of Limited Tag, 21 Fed. 789.

[72]Mar Bing Guey v. United States, 97 Fed. 576.

right to remain.[73] This appears from the acts themselves.[74] But to constitute such *prima facie* evidence their contents must conform strictly to the requirements of the statute;[75] and if entrance is allowed a Chinese person not a laborer on a defective certificate who after entry becomes a merchant, he may be deported in spite of having exercised acts incidental to the mercantile status for seventeen months.[76] Nor do defective certificates constitute evidence of the right to enter or remain, for this right is made by law to depend on the possession of a certificate executed in the form prescribed by statute[77] and by the authority designated in the act;[78] and the fact that an official of the Government allows a Chinese person to land in the United States without presenting any certificate at all is not *prima facie* evidence of his right to remain.[79] And the *prima facie* evidence afforded by the contents of the "section 6 certificate" that the holder is a merchant is rebutted by the fact that he entered upon manual labor immediately after being admitted into the United States.[80] But, while the *prima facie* proof constituted by a certificate issued in accordance with Article II of the treaty of December 8, 1894 may be overcome by proper evidence and may not have the effect of a judicial determination, being made in conformity to the treaty, and the holder has been duly admitted to a residence in this country, he cannot be deported on the ground of wrongfully entering the

[73]Wan Shing v. United States, 140 U. S. 424, 35 Law Ed. 503; Lew Quen Wo v. United States, 184 Fed. 685; United States v. Ng Park Tan, 86 Fed. 605; United States v. Yong Yew, 83 Fed. 832.

[74]Section 6 of the Act of 1882; section 7 of the Act of September 13, 1888.

[75]Cheung Pang v. United States, 133 Fed. 392; United States v. Yong Yew, *supra*.

[76]United States v. Pin Kwan, *supra*.

[77]Cheung Pang v. United States, *supra*.

[78]United States v. Mock Chew, 54 Fed. 490.

[79]Mar Bing Guey v. United States, *supra*.

[80]United States v. Ng Park Tan, 86 Fed. 605; United States v. Young Yew, 83 Fed. 832.

United States upon a fraudulent certificate unless there is some competent evidence to overcome the legal effect of the document.[81]

(3.) Certificates of Registration or Residence.

The certificate of registration or residence issued under the Act of 1892, as amended, differs in essential particulars from the "section 6 certificate" of identity, or the "return certificate" authorized by the Acts of 1882 and 1884, and the Act of 1888. Whereas the possession of the former constitutes at best only *prima facie* evidence of the right of the holder to enter the United States, and constitutes the only evidence on which such right may be supported, the possession of the latter in the hands of him to whom it was issued by lawful authority is conclusive evidence of the right to remain,[82] and its absence constitutes only *prima facie* proof that the person failing to present it is not lawfully in the United States.[83] Rights which arise from the lawful possession of a certificate of registration may, however, be forfeited by subsequent illegal acts of the holder; thus, if a Chinese laborer, registered in accordance with the Act of 1892, leaves the United States without first obtaining the return certificate prescribed by the Act of 1888, and re-enters by other than a regular port of entry the certificate is ineffective in his hands.[84] What stress the courts place on the final and conclusive effect of the certificate of registration is shown in the recently decided case of Lew Quen Wo v. United States,[85] where the court held that the effect thereof was to register the solemn act of the United States Government, and the intention was to furnish conclusive evidence of the right

[81]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.

[82]*In re* Tom Hon, 149 Fed. 842.

[83]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[84]United States v. Tuck Lee, 120 Fed. 989; Jew Sing v. United States, 97 Fed. 582.

[85]184 Fed. 685.

of the holder to remain in the United States, such evidence not to be subject to collateral attack;[86] and so conclusive is the effect of such a certificate considered that it has been held that a United States Commissioner has not the right to cancel it on the ground that it was obtained by fraud.[87] And where a Chinese alien after being ordered deported in a judgment in *habeas corpus* proceedings gave bail but failed to appear, and was afterwards apprehended for the purpose of carrying out the judgment, and was found to have been granted a certificate of residence under the Act of 1893, the court held that the certificate constituted conclusive proof of his right to remain in the United States, and was not subject to collateral attack in a proceeding to enforce a judgment of deportation rendered against him before the registration law took effect.[88] The effect of the certificate is, needless to say, based on the assumption that it is genuine; and when a United States Commissioner finds that the certificate on which the defendant bases his right to remain is spurious, the defendant is not entitled to his discharge on *habeas corpus*.[89] It may be added in passing that a Chinese laborer who has acquired a certificate under the Act of May 5, 1892, does not need to register under that of November 3, 1893; and that, the failure to produce the latter may consequently be cured by producing the former.[90]

(C.) Evidence Available in Absence of Certificate.

As has been already pointed out, where, as in the Act of 1888, the law makes possession of certificates by Chinese persons the sole evidence of the right to enter or return, or where, as under the Act of 1893, the law provides

[86]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.
[87]*In re* See Ho How, 101 Fed. 115.
[88]*In re* Tom Hon, 149 Fed. 842.
[89]*Ex parte* Lung Wing Wun, 161 Fed. 211.
[90]United States v. Jung Jow Tow, 110 Fed. 154.

the kind of evidence necessary to establish the right in the absence of certificates of registration and residence, no other evidence in the first instance, and no evidence of a different nature from that prescribed by statute in the second will suffice to establish the right. This is the generally accepted rule; although as has been seen, it was subject to relaxation when attempt was made to strictly apply it under the Acts of 1882 and 1884, the reason being that the acts could not be construed to apply to persons who, under the circumstances, never had an opportunity to obtain the certificate;[91] or when there was absolute proof that, once having been lawfully obtained, it had been lost or stolen.[92] And just as it was impossible for a Chinese laborer residing in the United States on the date of the treaty of 1880, who had left the United States on a visit to China before the passage of the Act of 1882 to secure the return certificate, which, under that act, was to be issued in this country, so was it equally impossible for a Chinese merchant not residing in China at the time of the passage of the Act of 1882, and who arrived in the United States from the foreign country of his residence, to procure the certificate of identity required by this act, inasmuch as that particular certificate could be issued only by the Chinese government. In such a case it was held that the mercantile status of the latter could be proven by parole evidence,[93] as well as where the applicant for admission left China for Honolulu but was for some reason brought first to a port of the United States.[94]

In such cases the main question is whether parole or other evidence is permissible, and the second of what shall such evidence consist. The rule regarding secondary evidence was in effect that it would be allowed only in such

[91]Chew Heong v. United States, 112 U. S. 536, 28 Law Ed. 770; *In re* Ah Quan, 21 Fed. 182; *In re* Leong Yick Dew, 19 Fed. 490; *In re* Chin A On *et al.*, 18 Fed. 506.

[92]United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591.

[93]Case of the Chinese Merchant, 13 Fed. 605.

[94]*In re* Ho King, 14 Fed. 724.

extraordinary and exceptional cases as could not be deemed to have been within the legislative prohibition; as to all other cases it was unquestionably the intention of Congress to exclude secondary evidence, and for this reason no provision was made as to what kind of secondary evidence should be available. It follows that in such cases any competent evidence bearing on the right of entry or return might be introduced. And this must necessarily result in all cases where no restriction has been placed by Congress on the evidence whereby the alien may prove his right to enter or remain.

Where Claim is American Citizenship.

Occasional difficulty is experienced, however, in determining whether or not a restricting provision applies to a particular case. In the proof of citizenship, set up as the sole and fundamental ground of the right to re-enter (no claim to mercantile status being made) it is plain that the provision of section 2 of the Act of 1892 requiring proof of mercantile status by at least two credible white witnesses would have no application. So, where the claim of citizenship is made by a person arrested without the certificate of residence required by section 6 of the Act of 1892.

It may be said that while the fundamental ground of the right to remain is the fact of having been born in the United States, the establishment of this fact would necessarily include proof of former residence—and the act provides that such residence cannot be shown by testimony wholly Chinese. But the fact of residence, proof of which is thus required by the Act of 1893, is ordinarily the main —and in truth the only essential fact—by which the right to remain can be established; whereas if proof thereof is presented in a case where the right to remain is based on the citizenship of the party, it can only be in the nature of proof of an incident, and—in view of the fact that birth itself is the only determinative fact of citizenship irrespec-

tive of residence—one which can have no direct bearing on the main fact to be proven. Thus the courts have decided that citizenship may be proven by Chinese testimony, stating that the requirement that a Chinese person claiming to be a merchant who seeks to re-enter the United States must prove his status as such by white witnesses is a special rule of evidence and does not apply to the issue of citizenship;[95] and where the claim of the defendant that he was a native born citizen of the United States was supported by his own testimony, consistent and explicit in character, and giving his place of birth, residence at different times, place of attending school, and other material facts, all of which were supported and corroborated by the testimony of an uncle and cousin and wholly uncontradicted, it was held sufficient to prove the citizenship claimed.[96] The above examples seem to express the existing law on the subject, although there are other decisions in which the holding that the defendant has proven his American citizenship is based in part at least on the corroborative testimony of white witnesses.[97]

Where Claim is Mercantile Status During Registration Period—In General.

A situation analogous to the above is presented by the case of a Chinese person arrested in deportation proceedings for not having secured a certificate of registration, and who claims he was a merchant at the time the act went into effect, and was, therefore, under no obligation to procure the same. Such a person, if in fact he was a merchant during the registration period, is under no obligation, on reverting to the status of laborer after that period, to procure a certificate, and, as a matter of fact, could not do so as a laborer because the act limited the period within

[95]United States v. Lee Seick, 100 Fed. 398.
[96]Moy Suey v. United States, 147 Fed. 697.
[97]United States v. Lee Wing, 136 Fed. 701.

which such certificates were procurable.[98] But, being a laborer found without such certificate, is the evidence by which he is to prove his right to remain subject to the restrictions of the act? Bearing in mind that it is the former residence which must be proven by the evidence of at least one witness other than Chinese, it would seem that the restrictions should not be deemed to apply to evidence offered to prove mercantile status, but that, on failure to prove the latter, the provision of the statute should apply. There is, however, a conflict of judicial opinion on this point, some courts holding that the mercantile status may be proven by Chinese witnesses[99] and others that residence as such in the United States prior to May 5, 1892, must be proven by at least one credible white witness.[100]

Registration is required first of all of Chinese laborers and not of merchants. In the case of laborers, presence in the United States without the certificate of residence constituted no more than *prima facie* proof that they were not entitled to remain.[1] This, the act specially provided, could be rebutted by proof of residence in the United States at the time of the passage of the act—and this was to be proven by at least one credible witness other than Chinese. Not so with Chinese merchants; for, in the first place, being under no obligation to register, the evidential effect of the absence of the certificate was, as to them, nil; and, as to merchants, who are not excluded by the exclusion acts, but on the contrary, are expressly permitted to enter, the fact of their presence here is *prima facie* evidence of their right to remain, subject, of course, to rebuttal by the Government.[2]

[98]United States v. Leo Won Tong, 132 Fed. 190; *In re* Yew Bing Hi, 128 Fed. 319; United States v. Louie Yuen, 128 Fed. 422.

[99]United States v. Louie Yuen, *supra.*

[100]United States v. Yee Gee You, 152 Fed. 157.

[1]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[2]United States v. Chin Sing, 153 Fed. 590; United States v. Wong Lung, 103 Fed. 794.

(a.) Where the Person Arrested is a Merchant.

If the person arrested on the ground of being a laborer is a merchant, he is under no obligation to prove residence prior to 1893, as that provision applies exclusively to laborers. If, therefore, the claim of existing mercantile status is raised, this would seem to be a preliminary question for the court to decide, as there is no provision to the effect that the absence of the certificate is conclusive evidence of a labor status, and that the person concerned can prove his right to remain only by showing a prior residence. The *present* mercantile status, may, then, be raised just as in the case of citizenship; and as there is no provision of law restricting or imposing limitations on the manner in which this is to be proved it is open to proof by any evidence which the defendant may offer. If this proof fails he is then necessarily relegated to the status of laborer, and must as such prove prior residence in the manner provided by statute.

(b.) Where the Person Arrested is a Laborer.

There seems to be no reason why a different rule should apply as to the mode of proving *prior* mercantile status existing during the period of registration. Chinese laborers were registered under the act only on showing proof sufficient to the registering officer of their right to remain. Absence of the registration certificate consequently gave rise to the presumption of non-residence in the country at the time of registration; and, therefore, the Chinese laborer arrested without a certificate was under the obligation of rebutting the presumption of non-residence and of rebutting it by testimony prescribed by statute. If, however, the allegation of mercantile status during the registration period is made by the defendant, here again a preliminary question is presented to the commissioner; for, if at the time the defendant was in fact a merchant, not being under the obligation to register, his failure to do so would not give rise to the presumption that he was

not residing in the United States during the registration period; and thus the obligation of rebutting such a presumption could not exist. Again, the failure to register, apart from the philosophy of the provision, is what gives rise to the obligation to rebut the effects of that failure by testimony of a designated kind. It would not seem to be the policy of the law to impose equal obligations on persons who, in the face of the expressed directions of the statute, deliberately failed to carry them out, and those who have omitted to perform an act which that law expressly provided that they were under no obligation to perform.

a. Where Original Mercantile Status Terminated Before Expiration of Registration Period.

A different case is presented by that of Chinese laborers who on arrest for failure to register present *bona fide* certificates of identity issued to them as merchants under section 6 of the act of 1882, as amended by the Act of 1884, who, before the period for registration had ended, lost their mercantile status or assumed that of laborers. As such certificates constitute only *prima facie* evidence of the mercantile status their contents are of course rebutted by the established fact that the holders are no longer merchants. Having lost their status as such before the expiration of the registration period the act, which specifically includes all laborers, must include them also; and the mere fact that they were merchants at some former point of time constitutes no defense.[3] Proof of such former status would in such case be immaterial to the issue, and, the facts being shown, the validity of any defense left to them could be established only by the method applicable to other Chinese laborers.

[3]Cheung Him Nin v. United States, 133 Fed. 391; Chain Chio Fong v. United States, 133 Fed. 154.

Wives and Minor Children of Domiciled Chinese of the Exempt Classes.

The necessity of the possession of certificates of identity, as sole evidence of their right to admission by Chinese merchants coming to the United States has already been discussed.[4] While Congress both by legislative enactment and by treaty has provided that return certificates be issued to Chinese laborers and that no other evidence of their right to return shall be admissible, no provision was made in the law regarding the issuance of return certificates to Chinese merchants who depart temporarily from this country. It was thought at an early period in the history of the Chinese exclusion acts that the "section 6 certificate" must be considered as the sole evidence of that right, but the decisions of the courts to the contrary[5] showed the need of special legislation on this point, and the existing lack was supplied by the Act of 1893 requiring special proof of mercantile status during at least one year preceding the date of departure. The controlling fact in allowing such merchants to return without presenting the certificate in question was the duly proven domicile and mercantile status of the parties. In an early case the presence of a Chinese merchant otherwise entitled to remain in the United States, who returned from a temporary visit to Canada, was held to be lawful, although on re-entry he did not present the certificate to the collector who was otherwise satisfied of his right to remain, on the ground that the Act of 1884 provided that "the collector shall in person decide all questions in dispute with regard to the right of any Chinese passenger to enter the United States; and his decision shall be subject to review by the Secretary of the Treasury, but not otherwise."[6]

The nature of the evidence necessary to establish the

[4] *Ante*, p. 577.

[5] Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340; United States v. Gee Lee, 50 Fed. 271.

[6] United States v. Lee Hoy, 48 Fed. 825.

right to enter into or remain in the United States of persons not directly designated by treaty or statute as belonging to the exempt classes, already adverted to,[7] has been the subject of judicial consideration on more than one occasion. Reference is made to the wives and minor children of Chinese merchants or of other persons who by law belong to the exempt classes. The right of such persons to enter the United States without the certificate of identity required by section 6 of the Act of 1882 had been repeatedly denied,[8] and also repeatedly affirmed[9] by various lower United States courts before which it came for adjudication, until it was definitely affirmed by the Supreme Court in the case of United States v. Gue Lim.[10] In this case the wife and minor children of a Chinese merchant domiciled in the United States had been allowed to land without the production of the certificate. They were later arrested on the charge of being laborers who had failed to register as required by the Act of 1893 and therefore without certificate of registration, and without any other legal right or authority to remain in this country. Said the Court: "It is impossible to presume that the treaty of 1880 in omitting to name the wives of those who by the second article were entitled to admission meant that they should be excluded. If not then they would be entitled to admission because they were such wives, although not in terms mentioned in the treaty." In commenting on the fact that section 6 of the act could not be construed to mean that wives must take out certificates of identity the court said: "The section assumes that applicant for a certificate has some occupation or profession

[7] *Ante*, p. 573.

[8] *In re* Li Foon, 80 Fed. 881; *In re* Lum Lin Ying, 59 Fed. 682; *In re* Wo Tai Li, 48 Fed. 668; Case of the Chinese Wife, 21 Fed. 785; *In re* Ah Quan, 21 Fed. 182.

[9] *In re* Lee Yee Sing, 85 Fed. 635; United States v. Gue Lim, 83 Fed. 136; *In re* Chung Toy Ho, 42 Fed. 398.

[10] 176 U. S. 549, 44 Law Ed. 544; and see United States v. Yee Oung Yuen, 191 Fed. 28.

which has theretofore been pursued at some place, which is not the case here." And again: "To hold that a certificate is required in this case is to decide that the woman cannot come into this country at all, for it is not possible for her to comply with the act, for she cannot in any event procure the certificate even by returning to China. She must come in as the wife of the domiciled husband, or not at all. The act was never intended to accomplish the result of permanently excluding the wife under the circumstances of this case, and we think that properly and reasonably construed, it does not do so. If we hold that she is entitled to come in as the wife because the true construction of the treaty and the act permits it, there is no provision that makes the certificate the only proof that she is such wife. In the case of the minor children the same result must follow as in that of the wife."

This decision shows, not only that the wife and a minor child of a Chinese person belonging to any one of the exempt classes are themselves not excluded from entry without a certificate by the Act of 1882, but that the fact of the marriage or parental relation may be proven by any evidence available. The case of Lee Lung vs. Patterson[11] in which the right of entry was denied presents a somewhat similar state of facts, but the excluding decision was based on entirely different grounds. There a domiciled Chinese merchant together with a second wife lawfully wedded to him in China, although the first wife was still living as such at the time of their arrival in the United States, and accompanied by an alleged child by the first wife, sought admission to this country. He was duly admitted, but the second wife and child although provided with section 6 certificates issued in accordance with the third article of the treaty of December 8, 1894, were refused admission; the wife on the ground that she was not a legal wife according to our interpretation of the

[11]186 U. S. 168, 46 Law Ed. 1108.

term; and that, therefore, the reasons on which the Gue Lim decision[12] was based did not meet her case—the child because the Secretary of the Treasury was not satisfied of the fact of her identity as the child of the alleged father. The court held that as the Act of August 18, 1894, vested the final determination as to the right of aliens to enter the United States under any law or treaty in executive officers, the judgment of the district court to which the matter had been brought on *habeas corpus* that it was without jurisdiction should be affirmed.

The difference in result between the two classes lies largely in the difference between the remedies available to the parties. In the Gue Lim case the parties were arrested as laborers without the right to remain in the United States. The proceedings were, therefore, before a United States commissioner, and included the right of judicial review of the facts on appeal. In the Lee Lung[13] case the issue was the right to enter, not to remain in the United States, and the facts on which the issue was based were not subject to judicial review. The question arose as to the sufficiency of the certificate held by the women. It was admitted that it constituted at best but *prima facie* evidence of the right to enter; but it was claimed that the collector had not given due weight thereto. The court held, however, that even if the collector had disregarded it as evidence he would not lose his jurisdiction thereby. While there is no doubt that in excluding the alleged daughter the decision of the collector was based purely on his finding of fact, may it not be said that in holding that the second wife was not entitled to admission *as such* he went beyond his jurisdiction in passing on a question of law? There is, however, little doubt as to the correctness of his conclusion on that point, as it can scarcely be presumed that either the treaty of 1880, the Act of 1882, or the Treaty of 1894 meant to in-

[12]United States v. Gue Lim, 176 U. S. 549, 44 Law Ed. 544.
[13]Lee Lung v. Patterson, 186 U. S. 168, 46 Law Ed. 1108.

clude as members of the exempt classes persons whose status was based on a polygamous relationship. Still, in the light of later decisions of the Supreme Court it seems as if the district court might have properly assumed jurisdiction as to that point.

In those cases in which the right to enter is found to exist—that is, when the relationship claimed is proven to the satisfaction of the executive officers—the basis of the right to enter is the communication of the corresponding right in the husband or father. As said in the Gue Lim[14] case, the woman must come in as the wife of the domiciled husband or not at all. This being the case the *prima facie* evidence of the right to remain presented by the accepted fact of the marital relation may be rebutted by such evidence as is sufficient in law to rebut the *prima facie* evidence presented by the husband's certificate of identity; *a fortiori* by evidence tending to show that the marital relationship did not in fact exist, or was merely colorably entered into by either or both parties for the special purpose of evading the provisions of the law.[15]

In the case of Chu Chee v. United States, the question of the communication of status and evidence submitted in connection therewith was considered at length both by the district court[16] and by the Circuit Court of Appeals.[17] In this case the evidence of the right to enter consisted in insufficient certificates of identity in which the applicants were described as students. The certificates were insufficient because they were issued only by the United States consul at Hongkong without the authorization of the Chinese government. The law provides that members of the exempt class shall take out the certificate in the prescribed form in order to enter the United States. The applicants were students, and were entered by the col-

[14]Gue Lim v. United States, 176 U. S. 549, 44 Law Ed. 544.
[15]Looe Shee v. North, 170 Fed. 566.
[16]87 Fed. 312.
[17]93 Fed. 797, and see Chapter on Status, *ante*, p. 330.

lector as such. It does not appear whether they were arrested on the ground that they were laborers not provided with registration certificates or on the ground that they were merely Chinese persons unlawfully in the United States. They introduced the certificates of identity to show that they were not laborers, and in addition thereto other evidence which established the undisputed fact that they were at the time of their arrest, and had been ever since their arrival in the country, students.[18] The Circuit Court of Appeals held that being landed on a certificate other than that provided by law, they were unlawfully in the United States and subject to deportation; and that the certificate constituted no evidence of their right to land. The district court held that "while these statutes[19] in express terms make a certificate the sole evidence of the right to land, and in the case of laborers the sole evidence of the right to remain in the United States, yet in all other cases of deportation it is permissible for the person arrested to establish by affirmative proof.....his lawful right to remain." Both courts are in accord as to the point of unlawful entry. But the Circuit Court of Appeals further states that "they cannot purge themselves of their offense by assuming the occupation of members of the privileged classes;" that their right to land being dependent on the certificate they must produce the same in order to prove the right to remain; and that being minors, and their father being a laborer, the status of the children was, under the law, that of the father. "The defendants belonged to that class upon their arrival in this country, and they so continued up to the time of their arrest; and not having the certificate as required under section 6 of the Act May 5, 1892,.....they were not entitled to remain in the United States."

It seems clear enough that, being admitted on certificates insufficient in law, the entry thus affected must nec-

[18] 87 Fed. 314.

[19] Of 1892 and 93, as well as the earlier acts.

essarily be unlawful, and that the certificates could not constitute even *prima facie* evidence of the right to land. But it seems equally clear that in proceedings against them on the ground that they were laborers who had failed to take out certificates of registration the defendants were entitled to show by means of any evidence in their possession that they were not laborers when arrested, or during the registration period, and furthermore that the certificates, deficient as they were, might well have gone far to prove that such was the case, although necessarily insufficient to show that, even as students, they were entitled to remain in the United States. The deficiency of the certificate was no proof conclusive as to the absence of the status claimed, but merely proof of the absence of the right to enter. Regarding the evidence by which such existing status may be proven it remains to be said that this depends on the nature of the charge on which the right to deport is claimed. If it is unlawful presence in the United States it will be sustained by the facts of this case, to wit, that the entry was effected by means of a certificate insufficient in law. If, however, it is on the ground that the defendant is a laborer who has not taken out his certificate of registration under the Act of 1893 proof that the defendant is not a laborer but a student should be received just as proof is receivable in charges brought under the same section when the defense is that the defendant is, or was at the time of registration, a merchant, or a citizen of the United States; that is, irrespective of the submission of evidence other than Chinese required by a special rule of evidence, when the fact to be proven is prior residence of a Chinese laborer who has failed to register as provided by law.

3. *Other Evidence in Deportation Proceedings.*

When Congress by the Act of August 18, 1894, entrusted to administrative officers the final determination as to the right of aliens, claiming to exercise the same by virtue of

any law or treaty, to enter the United States, the former were, in the vast majority of cases, made the sole judges of the existence of such right, and as such were given practically exclusive jurisdiction to pass on the questions of fact on which the right to enter was based. While not going so far as to say that they may exclude evidence which properly comes before them they may disregard it in the sense that they may consider it inconclusive if not altogether immaterial to the issue, provided, perhaps, that such refusal to concede it any evidential force whatsoever is not purely arbitrary. Being the sole judges of questions of fact, anything from which the existence or nonexistence of the facts whereby the right of entry is sought to be proven may be determined is a proper subject for their consideration, and there is no limitation on the sources on which they may draw for the purpose of reaching a correct and fair conclusion.

The province of the United States commissioner in deportation proceedings to determine the right of Chinese aliens to remain in the United States is practically the same, excepting that the proceedings held by him are subject to review by the courts. This distinction is not, in practical effect, of such great importance as at first thought it might seem to be. Difference between the right of judicial review and the absence thereof may and does mean in many individual cases the difference between remaining in and being deported from the United States; indeed, it is possible that it may in certain cases mean the difference between the banishment from his native country of an American citizen and the continued exercise and enjoyment of his right as a dweller therein under the Constitution. But in the great majority of cases, as pointed out at a later page,[19a] the court will not on appeal reverse the commissioner's findings of fact, even if on the same facts the court itself would have come to a different conclusion,

[19a] See post Chapter on Deportation Procedure.

unless the finding is obviously opposed to the great weight of the evidence offered.

It is true that the courts may examine additional testimony if they so desire; but it is likely that such evidence would be viewed with the greatest suspicion, at least under conditions where it was available at the time of the hearing before the commissioner.

Deportation proceedings being *sui generis,* many of the rules of evidence applicable to civil or criminal trials have little or no application;[20] thus both the courts and the commissioner may be said to have, in common with executive officers, the right of determining whether or not any given fact, no matter how apparently immaterial in its application to the main fact to be proven, has any real bearing on the issue. It follows that the evidential force and effect of acts or conditions connected with the progress of the case which could not or might not be properly considered in the course of the trial of ordinary causes is frequently presented for the determination of either the judge or the commissioner.

Chinese Evidence.

Thus the probative value of evidence given by Chinese persons merely because they were Chinese has been passed upon in the light of an evidentiary fact which it was proper to take into consideration in determining the issue of a given case; and while it has been held that, as Chinese evidence, it must be scrutinized with more than common caution, the mere fact that the witness is a Chinaman does not mean that he is necessarily an interested or biased witness.[21]

Testimony Given by the Witness Against Himself.

Deportation proceedings not being criminal in character, not only is evidence given by the witness against him-

[20]But see Moy Suey v. United States, 149 Fed. 697.

[21]United States v. Lee Huen, 118 Fed. 442.

self admissible,[22] but it is competent for the Government to swear the defendant as a witness against himself,[23] and the evidential effect of such statement will be given full consideration by the court. Although, strictly speaking, the rules of evidence have no application, and any and all testimony may be received by the judge or commissioner, he may see fit, for the very reason which renders certain evidence inadmissible if offered in regularly conducted civil or criminal cases, to reject it, or give it no weight whatsoever. Thus it was held that statements made by an alien under compulsion imposed jointly by an inspector and official interpreter would not be considered by the court in determining the date of the alien's arrival in the United States.[24]

Refusal to Testify.

The effect of standing mute and failing to testify has been differently construed by different courts. It has been held to constitute *per se* a badge of illegality, and an admission that the defendant has no right to enter or remain in this country.[25] Other decisions hold that, while it cannot be taken as proof or admission of any fact, it may constitute an unfavorable circumstance against the accused[26] and may be taken into consideration in ordering his deportation;[27] and still others the fact that the defendant refuses to take the stand is not of itself alone sufficient to justify an order of deportation,[28] particularly when statements, which, if true, would show his right to remain, are uncontradicted and unimpeached.[29] Again, a

[22]United States v. Hung Chang, 134 Fed. 19.

[23]Low Foon Yin v. United States, 145 Fed. 791.

[24]*In re* Lea, 126 Fed. 234.

[25]United States v. Chin Keu, 183 Fed. 332; and see United States v. Sing Tuck, 194 U. S. 161, 48 Law Ed. 917.

[26]United States v. Lee Huen, 118 Fed. 442.

[27]United States v. Moy You, 126 Fed. 226.

[28]United States v. Leung Shue, 126 Fed. 423.

[29]*Ex parte* Sing, 82 Fed. 22.

distinction has been drawn between cases where there was a mere failure to testify on the part of the defendant who has not been requested to do so, and where no such request has been made; it being held that the former case afforded no just ground for the issuance of the order.[30]

Surreptitious Entry.

Surreptitious entry into the United States, while perhaps not affording absolute proof of the absence of the right to enter or remain, falls but little short thereof; and at least goes far to show that the presence of the defendant in the United States is unlawful, and that sufficient grounds for his deportation exist.[31] But proof of frequent illegal attempts on the part of other Chinese persons crossing the Rio Grande should not be allowed to be of weight in determining whether a Chinese person held for deportation at El Paso was born in the United States or effected his entry in the same way.[32]

Racial Characteristics.

The fact that an alien possesses all the physical characteristics of a Chinese person (of which the court will take judicial notice) establishes at least *prima facie* that he is a Chinaman, on the principle of *res ipsa loquitur,* and the Government is not obliged to prove that nationality by additional facts;[33] but if the appearance of the alien arrested in deportation proceedings on the charge of being a Chinese person unlawfully in the United States is such that the court itself cannot be sure that he is a Chinaman, the burden is on the Government to prove the fact of Chinese nationality.[34]

[30]Ark Foo v. United States, 128 Fed. 697.

[31]Lee Joe Yen v. United States, 148 Fed. 682; United States v. Lee Wing, 136 Fed. 701.

[32]Lim Sam v. United States, 189 Fed. 534.

[33]United States v. Hung Chang, 134 Fed. 19.

[34]United States v. Louie Lee, 184 Fed. 651; Chee Cue Beng v. United States, 184 Fed. 383.

Statements of Government Officers.

The affidavit of a Chinese inspector charging the prisoner with being a Chinese person unlawfully in the United States does not constitute evidence of the fact by competent testimony; and, on the other hand, when the complaint alleged the residence of the defendant in the United States on May 5, 1892 without the certificate of residence, this allegation cannot be considered evidence of the fact of such residence, and the latter must be proven by the defendant as required by the statute.[35] But the statement of regularly appointed Chinese inspectors and interpreters in deportation proceedings as to the Chinese nationality of the defendant constitute evidence of that fact and do not lose their evidential effect because it is shown that the the witnesses obtained their knowledge of Chinese and Chinese characteristics through personal contact and intercourse rather than through book learning, and could not qualify as experts in ethnology and anthropology.[36] Although the fact that an alien presenting such physical characteristics arrives from China gives rise to the presumption that he was born there,[37] this will be rebutted by direct, circumstantial and uncontradicted evidence of his birth in the United States.[38]

Presumptions Based on Absence of Certificate.

The want of possession of the certificate of registration on the part of a Chinese laborer, as has already been stated, was made by law to constitute prima facie proof of his illegal presence in the United States. There seems to be little doubt that no such presumption exists in the case of a domiciled merchant who fails to have in his possession the "section 6 certificate," which alone authorized

[35]United States v. Williams, 83 Fed. 997.
[36]United States v. Hung Chang, *supra.*
[37]*Ex parte* Lung Wing Wun, 161 Fed. 211.
[38]United States v. Jue Wy, 103 Fed. 795.

his entry; since such certificates have never been considered to constitute more than evidence of the right to enter as opposed to proof of the right to remain. It has been held that a Chinese person is not subject to deportation when it is proved that he is and has been for seven years a member of a firm of merchants in the United States, although he has failed to produce any proof whatsoever as to the manner of his re-entry;[39] and it has been definitely held that the failure by the minor child of a Chinese merchant to have such a certificate in his possession can give rise to no presumption of illegal residence.[40] Indeed, when the lawful entry of such minor son has been shown such entry gives rise to a presumption of continued lawful residence here.[41] The obvious reason for this conclusion appears to be that, as neither the exclusion laws nor the treaties with China contain any such requirement the presence or absence of the certificate from or in the possession of a Chinese person of the exempted classes actually in the United States can have no significance one way or the other.

Presumption raised by length of residence.

Mere length of residence in the United States by a Chinese person is no indication that his presence in this country is lawful. Thus it is not to be presumed that because a Chinese person arrested in 1903 has lived without molestation in the United States for nineteen years he arrived in this country before the Act of 1882 went into effect.[42] Nor does the fact that a Chinese person has been allowed to land by the Collector of Customs constitute even prima facie proof of the alien's right to remain;[43] and when the evidence shows that an alien is a Chinese person

[39]United States v. Wong Lung, 103 Fed. 794.

[40]United States v. Chin Sing, 153 Fed. 590; and see United States v. Yee Oung Yuen, 191 Fed. 28.

[41]United States v. Yee Oung Yuen, *supra.*

[42]United States v. Ah Chong, 130 Fed. 885.

[43]United States v. Lau Sun Ho, 85 Fed. 422.

and not of the exempt class the presumption arises that he was not born in the United States.[44]

Evidential effect of official acts or documents.

The Courts have at times had occasion to determine what evidential effect shall be ascribed to acts of an executive or judicial nature such as the issuance of documents purporting to establish the right of entry or return of Chinese persons, or judgments or decisions rendered with regard to such right. Thus the courts have gone so far as to hold that a passport issued by the Secretary of State constitutes no evidence of United States citizenship,[45] while other courts, taking a less extreme view, state that a passport is not conclusive evidence of its contents, and its possession by a Chinese alien should be satisfactorily accounted for;[46] but it has been held that the legal effect of passports, certificates, and other papers in the possession of a Chinese person seeking admission into the United States is not rendered void by a statement made under oath by a Chinese inspector that the interpreter told him that the applicant had made certain statements to him as to his occupation and intention at variance with the contents of the passport.[47] The fact, however, that an alien possesses a passport issued by a foreign government does not affect this Government's right to deport;[48] nor is that right affected by the fact that the defendant holds a "certificate of identity" granted him by administration officers in accordance with Rule 19 of the Chinese Regulations of 1910 issued by the Department of Commerce and Labor,[49] though the possession by a Chinese person, who has acquired a domicile in Canada, of a certificate of leave en-

[44]*Ex parte* Loung June, 160 Fed. 251.

[45]Edsell v. Mark, 179 Fed. 292; *In re* Gee Hop, 71 Fed. 274.

[46]United States v. Sing Lee, 125 Fed. 627.

[47]*In re* Lum Lin Ying, 59 Fed. 682.

[48]United States ex rel. Calamia v. Redfern, 180 Fed. 506.

[49]Lew Quen Wo v. United States, 184 Fed. 685; see Chinese Regulations, Appendix.

titling him to return to Canada, issued by the Canadian officials at Vancouver, is sufficient to show prima facie that he has not lost his domicile.[50] The contents of a ship's list of Chinese passengers has been held inadmissible, unless the list is shown to be authoritative, and a certified copy thereof is produced,[51] nor is a birth certificate, not prepared as required by law, legal evidence in deportation proceedings;[52] nor does a consular certificate issued at Hongkong, and not indorsed *by the Chinese Government* in accordance with the provisions of section 6 of the Act of 1882 constitute evidence of the right of the holder to enter the United States.[53] And when the certificate shows that it has been issued by the Chinese Consul General at Yokohama, this fact alone is insufficient to show that it has been issued by the authority of the Chinese Government.[54] The certificate issued by a United States commissioner to the effect that a Chinese person is a citizen of the United States and thus entitled to remain is not legal evidence of the facts on which the commissioner's decision was based;[55] and where in proceedings against a Chinese alien he presents the judgment of a former United States commissioner dismissing former proceedings against him on the ground that he was an American citizen, this is not conclusive evidence of the fact that the defendant is the

[50]United States v. Chong Sam, 47 Fed. 878.

[51]United States v. Long Hop, 55 Fed. 58.

[52]Lee Yuen Sue v. United States, 146 Fed. 670. It has been held that the facts on which a Chinese person seeking to prove his birth in the Hawaiian Islands depends are presumably within his own control, and where at the time of the alleged birth in the Hawaiian Islands the law made it a penal offence for any parent not to report for registration the birth of the child, and no proof of compliance with this law was introduced on behalf of the petitioner, this fact militates strongly against the petitioner's contention, inasmuch as it was presumed that all births of children were registered in accordance with this law. *In re* Leong Sai, Vol. 1, U. S. District Ct. Hawaii, 234.

[53]United States v. Chu Chee, 93 Fed. 797.

[54]United States v. Mock Chew, 54 Fed. 490.

[55]*Ex parte* Lung Wing Wun, 161 Fed. 211.

person described in the judgment.[56] The written statement by a United States commissioner that a Chinese person has been adjudged to have the right to remain in the United States does not constitute either evidence of such adjudication or a judgment conclusive of such fact;[57] and on the other hand the affidavit of a United States Chinese inspector charging the prisoner with being a Chinese laborer does not constitute evidence to that effect,[58] nor does an unverified telegraphic despatch alleged to have been sent by the Bureau of Immigration at Washington, D. C., showing that an appeal in an immigration case has been dismissed constitute legal evidence that the appeal has in fact been dsposed of.[59]

4. *Sufficiency of Evidence in Determining Status.*

The preceding sections dealing with the evidence which may be presented for the purpose of establishing that the defendant in a particular case belongs to one of the classes declared exempt from its operation by the Chinese-exclusion acts, or is exempt altogether from the operation thereof by virtue of birth in the United States, have dealt with the subject of the evidence offered from the point of view of what proof is by statute available, or of how the fact at issue may be shown, rather than from that of the sufficiency of the evidence presented. It is now proposed to show whether or not, on a given state of facts, the status sought to be established is shown to exist. This involves at the outset an examination of the meaning of the terms "laborer" and "merchant" as used in the Chinese exclusion acts. Where the statute itself provides a definition its terms must be strictly followed, except of course where a literal interpretation of the same would give results which Con-

[56] *Ex parte* Long Lock, 173 Fed. 208.

[57] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; *Ex parte* Lung Foot, 174 Fed. 70.

[58] United States v. Louie Lee, 184 Fed. 651.

[59] *In re* Di Simone, 108 Fed. 942; reversed on confession of error.

gress plainly could not have contemplated, or which would obviously defeat the purposes of the act; and where no statutory definition appears the terms must, as a general rule, be deemed to have been used in their ordinary sense.

(A.) Laborer Status.

The term "laborer" was never defined in the Chinese exclusion acts until the passage of the law of November 3, 1893. The general distinction constantly maintained has been that which exists between "laborers" and "persons other than laborers." Those belonging to this second general class are designated by Article II of the Treaty of 1880 as "teachers, students, merchants, or Chinese subjects proceeding to the United States from curiosity," and later by Article III of the Treaty of 1894 as "Chinese subjects being officials, teachers, students, or travellers for curiosity or pleasure, but not laborers." It is true that Section 15 of the Act of 1882, as amended, states that "the words Chinese laborers wherever used in this act shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining;" but merely to provide that the word "laborers" should include special classes of laborers did not constitute a definition of the general term. Section 2 of the Act of 1893 provides "That the words 'laborer' or 'laborers,' wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundry-men, or those engaged in taking, drying or otherwise preserving shell or other fish for home consumption or exportation." This definition, it will be noted, while more detailed and particular than that in the Act of 1882, is not exclusive in its terms. Moreover, it does not limit the meaning of the word "laborer" so as to

except therefrom any persons who were laborers within the intent of those words as used in the treaty of 1880.[60]

While the common and generally accepted meaning of the term "laborer" in this country may be said to involve the conception of the performance of manual labor to the exclusion of other pursuits, the term as used in the Chinese exclusion acts is given a far broader meaning by the courts. Shortly before the Act of 1893 went into effect, a United States District Court held that the words "Chinese laborers," as used in the then existing law on the subject, had the same meaning as in the treaty with China; that, therefore, as far as regards exclusion, they included all Chinese persons not specifically enumerated as exempt;[61] and that it followed that highbinders and gamblers were laborers and subject to deportation under the Act of May 5, 1892. After the passage of the Act of 1893, it seems that an employment or business other than business participated in by legitimate "merchants" which only incidentally involved the exercise of manual labor for its conduct placed the participator or owner thereof in the category of manual laborers. Thus where the evidence showed that the proprietor of a restaurant provided, prepared and cooked meat for his patrons, it was held sufficient to prove that he was a laborer;[62] and the same result was reached where it was proven that a Chinese person acted at times as a cook, although his main occupation was that of merchant;[63] and where a Chinese person was shown to be a clerk employed in a store this was held sufficient to prove that he was a laborer within the prohibition of the act.[64] It was in vain that evidence was offered showing that Chinese persons had interests in mercantile concerns or were in fact regular members of such mercantile establish-

[60]Lee Ah Yin v. United States, 116 Fed. 614.
[61]United States v. Ah Fawn, 57 Fed. 591.
[62]*In re* Ah Yow, 59 Fed. 561.
[63]Lew Jim v. United States, 66 Fed. 953.
[64]Mar Sing v. United States, 137 Fed. 875.

ments. If the evidence showed that they spent part of their time regularly in manual labor, even if done in connection with the business of the firm, the status of laborer was held thereby to be conclusively proven, unless it were also shown that the manual labor performed "was necessary to the conduct of such business."[65] Even Chinese persons shown to be engaged in the business of keeping a restaurant or lodging house have been held to be laborers;[66] although it has been stated that the mere fact of being a restaurant-keeper does not necessarily make the owner a laborer;[67] and where a Chinaman was a resident merchant prior to the passage of the exclusion acts and in possession of a merchant's certificate providing for his re-entry after a temporary absence from the United States, it was held that he could not be regarded as unlawfully in this country because he had become a restaurant-keeper and had no laborer's certificate.[68] The fact that a Chinese person was an active teacher in a Sunday School, when shown in connection with the further fact that he was a laundryman, was held insufficient to take him out of the status of a laborer;[69] a decision which would seem to be fully justified by the bare words of section 2 of the Act of 1893, which specify that laundrymen are laborers.

The conception more or less common in the United States that one engaged in manual labor is employed for hire in the service of another—and this seems to have been the judicial conception thereof in some of the earlier cases[70]—has no application to the Chinese exclusion acts. Thus, where the proof showed that a Chinese person owned an interest of five hundred dollars in a mercantile establishment, but operated a fruit farm independently as

[65]Mar Bing Guey, 97 Fed. 576; Lai Moy v. United States, 66 Fed. 955.

[66]United States v. Chung Fi Koon, 83 Fed. 143; *In re* Ah Yow, 59 Fed. 961.

[67]20 Op. Atty.-Gen., 602, May 26, 1893.

[68]89 P. 525.

[69]*In re* Leung, 86 Fed. 303.

[70]*In re* Ho King, 14 Fed. 724.

a tenant thereof and sold the fruit grown there by his own labor, it was held sufficient to prove him a laborer under the exclusion acts;[71] and this decision follows, in so far as it decides that work done on a fruit farm by the lessee thereof is sufficient to classify him as a laborer, an earlier decision holding that the performance of certain manual labor by the lessee in assisting his employees—to what extent it did not appear—in gathering and caring for the fruit, was sufficient to establish his laborer's status.

As a Chinese woman takes, as has already been shown, the status of her husband, one marrying a Chinese laborer acquires thereby the same rights only to enter or remain in the United States as her husband holds;[72] and it appears that acts of prostitution by a Chinese woman constitute proof at least of her want of exempt status, and she is therefore to be held in the same category as a laborer.[73] Similarly want of exempt status is proven by the fact that a Chinese slave girl was brought into this country for purposes of prostitution by her master, from whom she later escaped;[74] and this in spite of the fact of her marriage, subsequent to the escape, to a person registered in the United States as a Chinese laborer. There was, however, considerable doubt as to the bona fides of the marriage.

Proof of the fact that a Chinese merchant was imprisoned for a felony has been held sufficient to show that during the time of his imprisonment he was a laborer, and consequently under the obligation of registering as such

[71]Lew Quen Wo v. United States, 184 Fed. 685; and likewise when a Chinese person is acting as manager of a rice plantation on which he worked, belonging to an unincorporated company in which he claims an interest, but which company had no articles of incorporation or co-partnership in which his name appears, he is an employee of the company and therefore not a merchant, but a laborer. U. S. v. Cut Yong, Vol. 1, U. S. D. Ct. Hawaii, 104.

[72]Case of the Chinese Wife (Ah Moy) 21 Fed. 785.

[73]Lee Ah Yin v. United States, 116 Fed. 614.

[74]United States v. Ah Sou, 138 Fed. 775.

under the Act of 1893—an act the performance of which was manifestly impossible as his term of imprisonment extended throughout the registration period. It must be conceded that it is somewhat difficult to conceive how during that time he could justly be held to be unlawfully in the United States, if, as a merchant, he was, up to the time of his imprisonment, lawfully in the country. It would seem that no matter how desirable the elimination from the community of so undesirable a resident may have been, the fact that he was imprisoned could not in truth alter the fact of his being a merchant any more than it could affect his nationality; that by no subtlety of legal alchemy could imprisonment at hard labor evolve a laborer from a merchant, and that for this reason alone his case would not seem to fall within the intent of the Act of 1893. The Court seems to have fallen into the same error as did the Circuit Court of Appeals in the Chu Chee case,[75] i. e., of overlooking the fact that status, meaning thereby what a man really is, is a pure question of fact; and that the mere circumstance that for some reason the person occupying the position cannot exercise it or is deprived of certain rights enjoyed by others similarly circumstanced, cannot operate to destroy a status which the incumbent has not surrendered or which has not ceased to exist by virtue of some positive provision of law.

When the record of the United States commissioner before whom certain Chinese persons were tried originally stated that "the proofs furnished in this case are sufficient to show that these three persons were engaged in business rather than in manual labor in 1894," although later found engaged as laborers without certificates of residence, they were held not to be laborers.[76] A distinction has been made between Chinese persons who were laundrymen whose regular business consisted in the manual labor necessary to conduct a laundry, and the pro-

[75]United States v. Chu Chee, 93 Fed. 797.

[76]Tom Hong v. United States, 193 U. S. 517, 48 Law Ed. 772.

prietors thereof. Thus where the facts showed that the defendant was the owner and operator of various Chinese laundries, and may incidentally have ironed a shirt or cooked his own dinner, he was held not to be a laborer under the act.[77] And the fact that the manual labor shown to have been done by the defendant was merely house work for a firm of thirteen partners was held sufficient to class him as a domestic.[78] It is to be noted in this connection that while members of the exempt classes "together with their body servants" are to be allowed to go and come of their own accord by Article II of the Treaty of 1880, Article III of the Treaty of 1894 contains no provisions as to domestics or servants. It may be further noted that the defendant in the case was a Chinese person who, up to some months before the passage of the Act of 1893, was a peddler, but who, at the time indicated, became a member of the firm in question, and was on that additional ground held not to be a laborer within the meaning of the act.

Proof of facts which show that Chinese persons are engaged in a calling or profession participation in which is not specifically designated in the treaties as exempting them from exclusion has been held sufficient to show that they were not subject to exclusion as laborers. Thus where it is shown that Chinese persons present in or seeking admission to the United States are actors,[79] waiters on board ship,[80] or members of a ship's crew,[81] it has been held that such persons are not laborers; but it is at the same time held that Chinese seamen have no right to enter the United States under the exclusion acts except on giving bond as required by the Rules of the Department of Com-

[77]United States v. Kol Lee, 132 Fed. 136.

[78]United States v. Sun, 76 Fed. 450.

[79]*In re* Ho King, 14 Fed. 724; *contra In re* Fook 65 Howard Practice, 404.

[80]*In re* Ah Sing, 13 Fed. 286.

[81]United States v. Jamieson, 185 Fed. 165; *In re* Moncan, 14 Fed. 44.

merce and Labor.[82] Except for the fact that it has been made the subject of judicial determination,[83] it would seem unnecessary to add that the wife and minor children of Chinese merchants domiciled in the United States are not laborers within the meaning of the exclusion acts. It was held in an early decision[84] that a Chinese laborer, to be excludable under the Act of 1882, must be a subject of the emperor of China; but in interpreting the meaning of the term laborer as used in the Act of September 13, 1888, it was held that where the evidence shows that a Chinese person has emigrated from Hongkong, or is even a native of that colony, he is excludable under that act.[85]

(B.) Mercantile Status.

The Act of 1893 was the first of the Chinese-exclusion acts to provide a definition for the term "merchant;" but the act of 1882 had already designated the facts which, if contained in the certificate of identity required by section 6 thereof, were to constitute prima facie proof of the mercantile status of the holder. In addition to the facts to be shown by the certificate of every Chinese person other than a laborer, said act provided that the merchant's certificate "shall, in addition to above requirements, state the nature, character and estimated value of the business carried on by him prior to and at the time of his application aforesaid: Provided that nothing in this act nor in said treaty (1880) shall be construed as embracing within the meaning of the word "merchant" hucksters, peddlers, or those engaged in taking drying or otherwise preserving shell or other fish for home consumption or exportation." As already stated, the contents of the certificate were subject to rebuttal by the authorities and, if the certificate did

[82]United States v. Crouch, 185 Fed. 907; United States v. Jamieson, 185 Fed. 165; United States v. Ah Fook, 183 Fed. 33; *In re* Jam, 101 Fed. 989.

[83]*In re* Lee Yee Sing, 85 Fed. 635.

[84]United States v. Douglas, 17 Fed. 634.

[85]United States v. Foong King, 132 Fed. 107.

not conform to the requirements, the holder was subject to exclusion on arrival, or if within the country, and basing his right to remain on the defective certificate, to deportation.[86]

Section 2 of the Act of 1893 defines to the exclusion of any other meaning the term "merchant" as used therein: "A merchant is a person engaged in buying and selling merchandise at a fixed place of business, which business is conducted in his name, and who, during the time he claims to be engaged as a merchant, does not engage in the performance of any manual labor, except such as is necessary in the conduct of his business as such merchant."

The section further provides that "Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing."

Buying and Selling Merchandise at a Fixed Place of Business.

In order to prove a mercantile status a Chinese person arrested for deportation who claims to be a merchant must affirmatively show a fixed place of business, and such frequent sales of merchandise as entitle him to be considered a merchant within the ordinary meaning of the term, or an actual or substantial interest in some firm of such merchants.[87] Thus, when it appears that the defendant was conducting the business of a merchant's clerk in his own name as a merchant's clerk, and was a merchant's clerk; succeeded to the interest of his father, a

[86]Cheung Pang v. United States, 133 Fed. 392.

[87]United States v. Lung Hong, 105 Fed. 188.

Chinese merchant in a Chinese mercantile concern, and was sent out by said firm to take charge of another business establishment, and owned a half interest in the firm, his mercantile status was held established.[88]

"Which Business is Conducted in His Own Name."

Where the evidence shows that a Chinese person was a merchant and a member of a mercantile firm up to the time when the stock was destroyed by fire, and that immediately thereafter he and his partner resumed and built up a business anew, the fact that his name does not appear in the firm name or in the partnership accounts is insufficient to prove the absence of mercantile status.[89] It is enough if the evidence shows that business is carried on in the firm name, where this includes the name of the defendant.[90] The soundness of this view was questioned by the Circuit Court of Appeals in the case of Pin Kwan;[91] but the Supreme Court held in the case of Tom Hong v. United States[92] that the names of the partners need not appear in the firm style under which a Chinese grocery is conducted in order to constitute the partners merchants under the Act of 1893; and that when the fact of a mercantile partnership is proved by other facts, the partnership books are not essential to establish the fact of partnership.[93]

"Does not Engage in the Performance of Any Manual Labor Except Such as is Necessary to the Conduct of His Business as Such Merchant."

Where the evidence showed that a Chinese person had owned interests in two mercantile firms and at the time of deportation proceedings still had an interest in one,

[88] *In re* Chu Poy, 81 Fed. 826.

[89] Wong Fong v. United States, 77 Fed. 168, reversing 71 Fed. 283; Lee Kam v. United States, 62 Fed. 914.

[90] United States v. Wong Ah Gah, 94 Fed. 831.

[91] United States v. Pin Kwan, 100 Fed. 609.

[92] 193 U. S. 517, 48 Law Ed. 772.

[93] And see United States v. Tan Sam Tao, 15 Phil. Rep. 592.

but was not actively engaged in business, and had a third interest in a restaurant of which he was head cook, and had provided himself with a laborer's certificate, these facts were held insufficient to establish a mercantile status;[94] and a Chinese person who spends half his time in cutting and sewing garments for sale by the firm of which he is a member is not a merchant within the meaning of the act;[95] nor is evidence showing that defendant worked as a servant in a boarding house and nailed up and delivered boxes in a grocery store where he had no financial interest consistent with a claim of mercantile status.[96]

It being under the act incumbent on Chinese persons who, on returning to the United States, allege that they are merchants, to furnish proof of the fact of the existence of the mercantile status for a period covering at least one year before departure, this can be done only by proving that during that time the applicant for admission was in fact a "merchant" as that term is defined in the Act of 1893.[97] Therefore, evidence which shows that during periods of varying length in the year prior to his departure for China, the applicant worked as a house servant for an old employer and engaged thereby in manual labor unconnected with his business as a merchant, is not sufficient to prove the status on which the claimed right of re-entry is based;[98] but where a Chinese merchant during the year antedating his visit to China was shown to have done no manual labor, except that for a short time he assisted in pickling shrimp and delivering them to customers, in connection with the business of a mercantile firm of which he was a member, these acts were held not to constitute manual labor within the meaning of the statute.[99]

[94]Mar Bing Guey v. United States, 97 Fed. 576.
[95]Lai Moy v. United States, 66 Fed. 955.
[96]Mar Sing v. United States, 137 Fed. 875.
[97]*In re* Lung (also *In re* Yue Soon), 61 Fed. 641.
[98]Lew Jim v. United States, 66 Fed. 953.
[99]Ow Yang Dean v. United States, 145 Fed. 801.

CHAPTER VI.

DEPORTATION PROCEDURE.[1]

I. Character in General.

II. Rejection and Deportation.
1. *Examination.*
2. *Appeal to Department.*
3. *Reopening decided cases.*
4. *Appeal to courts by writ of habeas corpus.*

III. Arrest and Deportation.
1. *Under the Immigration Law.*
   (a.) Arrest, Method of.
   (b.) Deportation, Warrant of.
   (c.) Appeal to the courts by writ of *habeas corpus.*
2. *Under the Chinese Exclusion Laws.*
   (a.) Arrest, Method of.
   (b.) Complaint and pleadings.
   (c.) United States Commissioner, Powers of under Chinese exclusion laws.
   (d.) Effect of Commissioner's findings.
   (e.) Order of deportation, Sufficiency of.
   (f.) Appeals.
      1. To the District Court.
         (a.) Nature of in general.
         (b.) How taken.
         (c.) Notice of appeal.
         (d.) Effect of.
         (e.) Abandonment of.
      2. To the Circuit Court of Appeals.
      3. To the Supreme Court of the United States.
         (a.) By appeal direct from district or circuit court.
         (b.) By certification from the circuit court of appeals.

[1]This chapter does not pretend to be an exhaustive thesis on the procedure and practice. The effort therein made is merely to outline in a general way the main features of procedure and practice that arise in connection with the enforcement of the immigration and Chinese exclusion laws in both the administrative and the judicial branches thereof, and to cite or quote from the leading decisions of the courts that affect more or less directly the subject in hand. For full information with respect to procedure and practice in the Federal courts, it will be necessary, of course, to consult some work dealing particularly with that subject.

(c.) By writ of *certiorari.*

3. *Reversal of findings on appeal.*

IV. Release Under Bail or other Bond.

1. *Of Aliens Applying to Enter.*
   (a.) Under the Immigration Law.
      1. For permanent purposes.
         (a.) Under "public charge" bond.
         (b.) Under "school attendance" bond.
      2. For Temporary Purposes.
         (a.) Transit of Japanese.
         (b.) Treatment in hospital.
         (c.) Other temporary purposes.
      3. In connection with a Writ of Habeas Corpus.
      4. For use as witnesses.
   (b.) Under the Chinese Exclusion Laws.
      1. Pending investigation and determination of status.
      2. For transit through the United States.
      3. For Chinese seamen discharged or on shore leave.
      4. In connection with a writ of habeas corpus.
      5. For use as witnesses.
2. *Of Aliens Arrested Within the Country.*
   (a.) Under the Immigration law.
      1. Pending issuance of deportation warrant.
      2. In connection with a writ of *habeas corpus.*
      3. For use as witnesses.
   (b.) Under the Chinese exclusion laws.
      1. In general.
      2. Pending hearing before United States Commissioner.
      3. Pending decision on appeal.
      4. For use as witnesses.

V. Place to which Deported.

1. *Under the Immigration Law.*
   (a.) Of aliens refused admission.
      1. At seaports.
      2. At land border ports.
   (b.) Of aliens arrested within the country.
   (c.) Power of courts to interfere if wrong country selected.
2. *Under the Chinese Exclusion Laws.*
   (a.) Of Chinese refused admission.
      1. At seaports.
      2. At land border ports.
   (b.) Of Chinese arrested within the country.

I. Character in General.

The procedure prescribed by Congress for the deportation of aliens under the Chinese exclusion and immigration acts, although providing for the arrest and detention of aliens proceeded against, is not criminal in its nature, and does not involve the right to a trial by jury.[2] It is essentially of a civil character and constitutes merely a method of enforcing the return to his own country of an alien held to be unlawfully in the United States,[3] or found not to be qualified to enter under the exclusion laws; and deportation thereunder does not constitute a punishment for crime.[4] The arrest or temporary detention of an alien in such proceedings is no more than a necessary incident thereof, as part of the means required to give effect to the acts of exclusion or expulsion passed by Congress in the exercise of its constitutional right to exclude or expel;[5] but Congress cannot, in providing a civil method of political administration, include therein a provision to the effect that an alien held in deportation proceedings to be unlawfully in the United States can, as the result of such finding, be sentenced to serve a term in jail at hard labor.[6]

Constituting, as these proceedings do, merely a method of enforcing a nation's right to expel aliens who are unlawfully in this country, or to prevent their entrance in

[2]Li Sing v. United States, 180 U. S. 486, 45 Law Ed. 634; Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905; Sire v. Berkshire, 185 Fed. 967; Tom Wah v. United States, 163 Fed. 1008; *In re* Lam Jung Sing, 150 Fed. 608; Toy Tong v. United States, 146 Fed. 343; Low Foon Yin v. United States Immigration Commissioner, 145 Fed. 791; United States v. Hung Chang, 134 Fed. 19; *In re* Tsu Tse Mee, 81 Fed. 562; *In re* Chow Goo Pooi, 25 Fed. 77.

[3]Fong Yue Ting v. United States, 149 U. S. 698, 37 Law Ed. 905.

[4]*Ibid.;* Wong Wing v. United States, 163 U. S. 228, 41 Law Ed. 140; United States v. Ngum Lun May, 153 Fed. 209; United States v. Wong Dep Ken, 57 Fed. 206; United States v. Chin King Hee, 3 U. S. D. Ct. Hawaii 556.

[5]Wong Wing v. United States, 163 U. S. 228, 41 Law Ed. 140.

[6]*Ibid.*

violation of the law, but who have been guilty of no crime in coming or attempting to remain, no formal pleading or complaint is required in proceedings regarding the right of an alien to enter or remain, and the want thereof does not affect the authority of the presiding officer or the validity of the statute by authority of which the proceedings are held;[7] nor will defects in the complaint or pleadings deprive quasi-judicial officers of their jurisdiction to pass upon the right of Chinese laborers to remain in the United States.[8] It has been held that in deportation proceedings before a collector of customs, while he was empowered to administer oaths, he was under no obligation to do so or to make written findings,[9] or to hear or permit the presence of defendant's counsel, and that he might take additional depositions of adverse witnesses after rendering a decision favorable to the applicant for admission and change his decision accordingly.[10] It has also been held that a Chinese applicant for admission has no right to be present himself or by counsel at a hearing held by departmental officers as to his admissibility, or to be informed of the nature of the testimony given against him,[11] and that an alien seeking admission has no right to be represented by counsel before the board of special inquiry.[12] These decisions support the construction which has always been placed by administrative officers upon the provision of section 25 of the immigration act that hearings before boards of special inquiry "shall be separate and apart from the public," i. e., that counsel shall not be allowed to participate in such hearings; also the provi-

[7]Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619; Fong Yue Ting v. United States, 149 U. S. 698, 57 Law Ed. 905; 9 Appeal Cases D. C. 290.

[8]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121.

[9]*In re* Way Tai, 96 Fed. 484.

[10]*In re* Leong Yonk Tong, 90 Fed. 648.

[11]*In re* Can Pon, 168 Fed. 479.

[12]*In re* Buccino, 190 Fed. 897; United States *ex rel.* Falco v. Williams, 191 Fed. 1001.

sions in rule 22 of the immigration rules regarding the limited participation of counsel in proceedings under warrants of arrest,[13] and the similar provision in rule 4 of the Chinese regulations[14] excluding counsel from hearings. The last-mentioned rule was quoted by the United States Supreme Court with apparent approval in the United States v. Sing Tuck *et al.*,[15] in which it was held that a further provision in the rule, requiring the separate examination of witnesses in the hearings accorded Chinese applicants for admission, was valid, being in accord with the common practice of taking precautions in court proceedings to prevent one witness from overhearing the testimony given by another.[16] Under the immigration Act of March 3, 1891, it was not even necessary that immigration officials should take any testimony at all, but they might decide that an alien was ineligible to land merely by personally "inspecting" him.[17] But the present law specifically requires that testimony shall be taken.[18]

While "regular procedure" must be followed by immigration officials in administering the provisions of law regarding the deportation of aliens, it is only a "substantial conformity of the procedure to such requirements that is demanded and a technical precision in the exemplification of the record is not to be looked for." [19]

Deportation proceedings are not "causes" within the meaning of section 566 of the Revised Statutes of the United States.[20] Being civil and not criminal, the ordinary rules of evidence have no application,[21] and defend-

[13] *Post*, 624.
[14] Appendix.
[15] 194 U. S. 161; 48 L. Ed. 917.
[16] *Ibid.*, p. 170.
[17] Nishimura Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146.
[18] Section 25, Act of 1907.
[19] United States *ex rel.* Barlin v. Rodgers, 191 Fed. 970.
[20] Toy Tong v. United States, 146 Fed. 343.
[21] *In re* Jem Yuen, 188 Fed. 350.

ants can be required to testify for the Government.[22] It follows that defendants can be punished for contempt for refusal to testify in the judicial or quasi-judicial proceedings which the law requires for testing their right to remain in this country.[23]

The procedure followed in effecting the deportation of aliens is of two distinct kinds, first, that under which aliens detained at ports of entry are returned to the port of foreign embarkation, and, second, that in accordance with which aliens who have already entered the United States are expelled to the country of origin.

II. Rejection and Deportation.

1. *Examination.*

All aliens, including those of the Chinese race or of Chinese descent[24] are, upon arrival at a port of this country, subject to the inspection provided by the immigration law.[25] In the case of Chinese, inspection occurs first under the immigration law; then, if found admissible, the applicant is examined in accordance with the laws relating specifically to Chinese persons and persons of Chinese descent.[26]

Inspection under the two sets of laws and regulations differs in one material respect only, viz: those found not admissible on primary inspection under the immigration law are held for more careful examination by a board of special inquiry with full powers to admit or reject; while

[22]Lau Chin Woon v. United States, 147 Fed. 227; Lee Yuen Sue v. United States, 146 Fed. 670; Low Foon Yin v. United States Immigration Commissioner, 145 Fed. 791.

[23]Tom Wah v. United States, 163 Fed. 1008, affirming 160 Fed. 207.

[24]24 Op. Atty. Gen. 706, 1903; *Ex parte* Chow Chock *et al.*, 161 Fed. 627, affirmed in 163 Fed. 1021; *Ex parte* Lee Sher Wing, 164 Fed. 506; Looe Shee v. North, 170 Fed. 566; *Ex parte* Li Dick, 174 Fed. 674; *Ex parte* Li Dick, 175 Fed. 998; *Ex parte* Wong You *et al.*, 176 Fed. 933; United States v. Wong You, 223 U. S. 67, 56 Law Ed. ——.

[25]Rule 4, Immigration Rules.

[26]Rule 3, Chinese Regulations, Append.

those found inadmissible under the Chinese exclusion laws are detained and thoroughly examined by an inspector, who reports to the commissioner of immigration or inspector in charge at the port, by whom the case is decided.

While section 866 of the Revised Statutes[27] provides that a circuit court may direct depositions to be taken *in perpetuam rei memoriam,* such provision applies only to "matters cognizable in any court of the United States," and testimony so taken for the purpose of showing that a Chinese person living in and about to leave the United States, was born in this country and is therefore not an alien, need not be regarded as conclusive by immigration officers who examine such person on his return, and if said officers hold such person is not a citizen, their decision will not be reviewed by a court under a writ of *habeas corpus* merely because the perpetuated testimony has been disregarded.[28]

2. *Appeal to the Department.*

Whether the order of deportation is issued by a board of special inquiry or by a commissioner or inspector in charge, an appeal lies (except in certain specified cases of rejection by a board)[29] to the Secretary of Commerce and Labor,[30] such appeal being submitted through the Commissioner General of Immigration, who places the record before the Secretary with his conclusions and recommendation attached thereto. From an admitting decision under the Chinese exclusion laws there is no appeal, but under section 25 of the immigration act the third member of a board of special inquiry may appeal from an admitting decision voted by two members of said board.

3. *Reopening Decided Cases.*

In practice the ends of justice sometimes require that a case in which the alien has been rejected by a board of

[27]U. S. Comp. Stat., 1901, p. 664.
[28]*Ex parte* Wing You, 190 Fed. 294.
[29]Section 10, Act of 1907.
[30]Rule 17, Immigration Rules; Rule 5, Chinese Regulations, Append.

special inquiry shall be reopened before such board for the consideration of additional evidence. This is accomplished, if an appeal has not been taken or if the appeal record has not yet been forwarded to the Commissioner General of Immigration, by an order to the board from the immigration official in charge at the port; if the record has been forwarded to the Commissioner General, but has not yet been submitted by him to the Secretary of Commerce and Labor, by an order from the Commissioner General; or, if the record has been placed before the Secretary, by an order from him, the order in either case being served on the board through the official in charge at the port. The effect of the reopening is to again vest the board with full power to decide the case; so that it can either reaffirm or reverse its former finding. In the case of Chinese examined under the Chinese exclusion laws, the practice is the same, except that, no board of special inquiry being used, the order for reopening is addressed to the official in charge by the Commissioner General or Secretary as the case may be.

4. *Appeal to the Courts by Writ of Habeas Corpus.*

The subject of the judicial review of administrative proceedings forms a separate chapter of this work.[31] As is there shown, an appeal to the courts through recourse to the writ of *habeas corpus* is available to the alien only (a) if the excluding decision of the executive officer involves the decision of a question of law, or (b) if it appears by the record that the petitioner has been denied a fair hearing.

The procedure for determining whether the writ lies differs at different ports. For instance, at New York and Philadelphia the practice is for the court to issue the writ upon the petitioner's making a satisfactory *prima facie* showing that a point of law is involved or that a hearing

[31] *Ante*, p. 477.

has been denied him.[32] Thereupon, if satisfactory return is made to the writ, the alien is remanded to the immigration officers for deportation; if the return is not satisfactory the court examines and disposes of the case on its merits. At Boston and San Francisco, on the other hand, the practice is for the court to issue a rule to show cause why a writ of *habeas corpus* shall not be granted, and if cause is not satisfactorily shown, then, but then only, does the writ issue.[33]

Under the Act of May 6, 1882, as amended by that of July 5, 1884, and the Act of 1888, the collector of customs was the officer designated by Congress to pass upon the right of returning Chinese laborers, and Chinese persons other than laborers, to enter the United States. It was held, however, that the decision of the collector was not necessarily final as to the right of a Chinese person to enter the United States[34] and thus, until August 18, 1894, a decision of an executive officer could be appealed to the courts by means of a writ of *habeas corpus,* except in cases where the decision covered matters purely of fact and was rendered in the due exercise of the discretion vested in the executive officer.

The Act of August 18, 1894, provided that "in every case where an alien is excluded from admission into the United States under any law or treaty now existing or hereafter made, the decision of the appropriate immigration or customs officers, if adverse to the admission of such alien, shall be final unless reversed on appeal to the Secretary of the Treasury." [35] Therefore, the only right of appeal enjoyed by a Chinese person seeking to enter the United States and rejected by the proper inspecting officer,

[32]United States *ex rel.* Canfora v. Williams 186 Fed. 354; United States *ex rel.* Di Rienzo v. Rodgers, 185 Fed. 334; United States *ex rel.* Barlin v. Rodgers, 191 Fed. 970.

[33]*Ex parte* Avakian, and *Ex parte* Kaprelian, 188 Fed. 688; Looe Shee v. North, 170 Fed. 566.

[34]United States v. Jung Ah Lung, 124 U. S. 621, 31 Law Ed. 591.

[35]Now Secretary of Commerce and Labor, 32 Stat. 828.

is this appeal to the Secretary of Commerce and Labor. It has been definitely decided that, in limiting the right of appeal to the Secretary, the act is constitutional, and that the effect of the act is to entrust to executive officers the final decision as to the right of the alien to enter.[36] The decision, to be valid, must not be arbitrary, but must be the result of a fair hearing,[37] and must not involve the determination of a question of law.[38]

The question of the right of the courts to intervene in immigration and Chinese cases by *habeas corpus* is discussed at length elsewhere.[39] An application for a writ of *habeas corpus* must be filed in the district court of the district in which the alien is being "restrained of his liberty." Formerly, i. e., before the new Judicial Code[40] took effect, the application could be made to either a circuit or a district court. Once such cases have come before the courts, the procedure with respect to their trial and their appeal to higher courts, and the grounds on which such appeals may be taken, do not differ materially from those that obtain in the cases of Chinese arrested within the country, discussed hereinafter.[41]

III. Arrest and Deportation.

1. *Under the Immigration Law.*

(a.) Arrest—Method of.

Sections 20 and 21 of the immigration act provide that any alien who shall enter the United States in violation of law, and such as become public charges from causes existing prior to landing shall, when found by the Secretary

[36]United States v. Ju Toy, 198 U. S. 255, 49 Law Ed. 1040; Chin Yow v. United States, 208 U. S. 8, 52 Law Ed. 369.

[37]*Ibid.*

[38]Gonzales v. Williams, 192 U. S. 1, 48 Law Ed. 317.

[39]Chapter on Judicial Review of Administrative Decisions *ante*, p. 477.

[40]36 Stat. 1087.

[41]*Post*, p. 637.

of Commerce and Labor to be in the United States in violation of said act, or when found by the Secretary to be subject to deportation under the provisions of said act or of any law of the United States, be arrested upon the warrant of the Secretary and taken into custody and deported to the country whence he came at any time within three years after the date of entry into the United States.

By rule 22 of the immigration rules officers are enjoined to make a thorough investigation of all cases where they are credibly informed, or have reason to believe, that an alien in the United States is subject to arrest and deportation on warrant under these sections. When an officer is so satisfied, he must make an application for the issuance of the warrant, stating therein the existence of facts which show that the alien belongs to one or more classes subject to deportation after entry. The proof of these facts must be the best that can be obtained. After the warrant has been issued in pursuance of the application and upon receipt thereof by the officer, the alien is to be taken before the person therein described and granted a hearing in order that he may show cause why he should not be deported. Pending the determination of his case he may, at the discretion of the immigration officer in charge, be taken into custody or allowed to remain in some place deemed by such officer secure and proper. During the course of the hearing the alien shall be allowed to inspect the warrant of arrest and all the evidence on which it was issued; and, at such stage thereof as the officer before whom the hearing is held shall deem proper, he shall be apprised that he may thereafter be represented by counsel, and shall be required then and there to state whether he desires counsel or waives the same.[42] If he decides to employ the services of counsel and selects one for this purpose, the latter shall be permitted to be present during

[42]Such a hearing before an immigration official on an appeal before the Secretary of Commerce and Labor with counsel constitutes due process of law. Sire v. Berkshire *et al.*, 185 Fed. 967.

the further conduct of the hearing, to inspect and copy the minutes thereof so far as it has proceeded, and to offer evidence to meet any evidence theretofore or thereafter presented by the Government. This provision regarding counsel is supported in a general manner by the decisions concerning counsel before boards of special inquiry.[43] If, however, the failure of an arrested alien to employ counsel is due to intimidation by an immigration officer, the warrant and proceedings thereunder are invalid, and the alien will be released on *habeas corpus*.[44] The alien's right to counsel is satisfied, however, if he is represented before the Secretary of Commerce and Labor by counsel, although not so represented in the hearing before the immigration inspectors.[45] It has also been held by a circuit court that deportation proceedings are invalid if the arrested alien is given no notice and afforded no opportunity to be present in person when evidence is being taken from sworn witnesses;[46] also in a case where the arrested alien was charged with importing a foreign woman for immoral purposes and with having admitted the commission of crimes or misdemeanors involving moral turpitude prior to entry, and where three hearings were held at which counsel was not present, at the first of which only the arrested alien was present, and at the second and third of which witnesses were sworn and the accused not brought face to face with them, there being no opportunity for cross-examination.[47] Both of these cases were reversed by the Circuit Court of Appeals, Third Circuit,[48] however, although not upon this ground; and, in view of the decisions to which reference has already been had, it may be seriously doubted whether either of them is sound. The

[43]Cited, *ante*, p. 617.

[44]United States *ex rel.* Bosny v. Williams, 185 Fed. 598.

[45]Sire v. Berkshire, 185 Fed. 967.

[46]United States *ex rel.* Huber v. Sibray, 178 Fed. 150.

[47]United States *ex rel.* Huber v. Sibray, 178 Fed. 144.

[48]Sibray v. United States *ex rel.* Kupples, Statlichnitzer and Huber, 185 Fed. 401.

tendency of the courts has generally been to regard these proceedings as summary and informal—not subject to the technicalities which obtain in court proceedings. The allegation in a warrant of arrest that an alien entered the United States without inspection is equivalent to an allegation that he is in the country in violation of law, and is sufficient to sustain a finding to the latter effect.[49] At the close of the hearing the complete record is forwarded to the Bureau of Immigration and Naturalization, together with any written argument submitted by counsel and the recommendations of the examining officer and the officer in charge, for the purpose of determining whether or not a warrant for deportation shall issue as a result of the showing made in the hearing.

(b.) Deportation—Warrant of.

If, after due consideration of the facts as disclosed by the record, the Department finds that the arguments submitted at the hearing in support of the alien's alleged right to remain are insufficient, a warrant of deportation is duly issued by the Secretary, and on receipt thereof by the proper officer the alien is taken into custody of the immigration officials (if this has not already occurred) for deportation, and thereafter deported.

No question of an administrative appeal can arise where an alien is arrested on the Secretary's warrant and subsequently ordered deported, since the proceedings are initiated as a direct result of the Secretary's issuance of the warrant in the first instance, and the hearing, while not, of course, had before him personally, is conducted before an officer to whom his authority is delegated in the warrant, and the entire record so formed goes before the Secretary (or Department) for consideration. Cases arising under warrant procedure differ in this respect, as far as actual provisions of the immigration law are concerned, from those arising at ports in which aliens are refused ad-

[49] *Ex parte* Hamaguchi, 161 Fed. 185.

mission to this country by a board of special inquiry. In the latter class of cases an appeal from the board is specially provided by section 25 of the immigration act. But in practical operation the administrative methods prescribed by the rule bring about the same result, since the issuance of two separate warrants—the warrant of arrest and the warrant of deportation—is required. In both classes of cases the Secretary really passes as a final court on the evidence which has been submitted or adduced by those officers whose duty it was to hear the case in the first instance.

(c.) Appeal to the Courts by Writ of Habeas Corpus.

What has been said on this subject in connection with cases arising at ports of entry[50] applies generally to cases arising within the country. While the law provides in section 25 that on appeal from findings of boards of special inquiry, other than those made absolutely final by section 10, the decision of the Secretary of Commerce and Labor shall be final, the act nowhere contains the provision that the Secretary's decision that an alien already in the country is unlawfully there is final with regard to his right to remain. The absence of such provision has had its effect on the judicial mind in various decisions involving a consideration of the question of the authority of the courts to review the decision reached by the Secretary as to the right of an alien to remain in the country. But it has nowhere been held that the courts have the right to pass upon the Secretary's finding merely because the decision reached by him might not have been reached by a court, and where no question except the correctness of the finding of fact was involved. It is safe to say that the only grounds of appeal open to the alien who has been found by the Secretary to be unlawfully in the United States are those available to one who has been refused admission to the United States by a final decision emanat-

[50] *Ante*, p. 621.

ing from the same source, to wit, the plea that he has been deprived of a fair hearing or that in denying him the right to remain the Secretary has been mistaken in his view as to the application or interpretation of the law.

2. *Under the Chinese Exclusion Laws.*

(a.) Arrest—Method of.

Section 2 of the Act of May 5, 1892, provides that any Chinese person or person of Chinese descent, when convicted and adjudged to be not lawfully entitled to remain in the United States shall be removed from the United States to China, unless he shall make it appear to the justice, judge, or commissioner before whom tried that he is a subject or citizen of some other country, in which case he shall be removed from the United States to such other country. Section 6 of said act, as amended by the Act of 1893, provides for the arrest of any Chinese laborer within the United States who shall have failed to obtain the certificate of registration required by said act. By section 3 of the Act of March 3, 1901, it is provided that no warrant of arrest shall be issued by a United States commissioner except upon the sworn complaint of a United States attorney or his assistant, a collector, deputy collector, or inspector of customs, a Chinese or immigrant inspector, or a United States marshal or his deputy, unless its issuance shall first be approved by the United States attorney of the district in which issued. Section 6 of the Act of 1892 provides that after arrest the alien shall be taken before a United States judge (or commissioner),[51] whose duty it shall be to order his deportation unless he shall clearly establish in the method provided by the section his right to remain in the United States.

By rule 23 of the Chinese regulations of the Department of Commerce and Labor, instructions are given immigra-

[51] Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 112; Fong May Yuk v. United States, 113 Fed. 898.

tion officials to arrest "Chinese found in the United States engaged in laboring pursuits and not having in their possession.....satisfactory evidence of their right to be and remain in the country," after according them "full opportunity to produce the certificate or other evidence," such arrest to be made on a warrant secured from a "justice, judge, or commissioner of a United States court." Said rule also provides that "Chinese who enter the United States surreptitiously" (and, as already shown,[52] this includes all Chinese without regard to occupational status) shall be arrested and deported under the summary method provided by the immigration act[53] and rule 22 of the immigration rules. Rules 24 and 25 of the Chinese regulations make provision for the proper identification of Chinese laborers arrested under judicial process, and for the payment of expenses incident to deportation. Those arrested as aliens merely are, of course, handled in the same way as other aliens—in accordance with immigration rule 22.

(b.) Complaint and Pleadings.

Since no particular form is required with regard to either the complaint or pleadings in deportation procedure, where, on appeal, objection is made to the validity of the process and the arrest, the court does not lose jurisdiction.[54] The official titles employed in section 3 of the Act of March 3, 1901, in describing the persons entitled to make the complaint are mere *descriptio personae;* hence, where a complaint is made by a Chinese inspector it is immaterial that it was filed with a United States commissioner located outside of the inspector's official district.[55] But a district court will not assume jurisdiction over a Chinese person already

[52]*Ante,* p. 274 *et seq.*
[53]Sections 20, 21, 35, 36.
[54]Toy Tong *et al.* v. United States, 146 Fed. 343.
[55]Toy Tong *et al.* v. United States, 146 Fed. 343.
[56]United States v. Luey Guey Auck, 115 Fed. 252.

ordered deported in another district but will dismiss the case.[56] Arrest on formal complaint under oath is not necessary, and is not a prerequisite to the power of the judge to grant the order of deportation;[57] nor is the commissioner deprived of jurisdiction by the lack in the complaint of positive averments of facts as to the official character of the person making it.[58] As no formal complaint is required,[59] a complaint alleging the residence in this country of a Chinese person on May 5, 1892, is surplusage and cannot take the place of evidence to that effect to be established by the defendant.[60]

Where the complaint alleges that a Chinese person was here without a certificate and the finding is that the defendant was here unlawfully and had entered unlawfully, the general finding that he was unlawfully here will support the judgment.[61]

The warrant will not be refused by a district judge who has no judicial knowledge that the executive department is without the funds necessary to deport a Chinese person under the Act of May 5, 1892;[62] and where Congress has appropriated funds for the enforcement of the exclusion laws, a court should assume that those funds are available for the enforcement of each section of such laws, and should order the deportation of a Chinese shown to be in the United States in violation of section 6 of the Act of 1892, although the court is informed by the Attorney General that the funds are not available for removing the Chinese from the country.[63] Owing to the informal nature of deportation proceedings, informalities or irregularities in the warrant will not destroy its effect; thus a warrant issued under the Act of March 3, 1901, is good,

[57] 9 Appeals D. C. 290.
[58] Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121.
[59] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.
[60] United States v. Williams, 83 Fed. 997.
[61] *In re* Gut Lun, 83 Fed. 141.
[62] *In re* Lintner, 57 Fed. 587.
[63] United States v. Chum Shang Yuen, 57 Fed. 588.

although filed by the Chinese inspector with a United States commissioner outside of the inspector's district.[64] In general, process is not returnable to a district other than that of its issuance, but the Chinese exclusion Act of 1888 alters this rule as far as it relates to inquiry regarding the right of a Chinese person to be in the United States.[65]

(c.) United States Commissioners—Powers of Under Chinese Exclusion Laws.

United States commissioners are quasi-judicial officers, and in hearings before them under the Chinese exclusion laws they act judicially;[66] therefore, a Chinese person refusing to answer questions put to him in proceedings had with a view to his deportation to China may be punished for contempt on an order to that effect from the district court to which the commissioner is attached.[67] While the commissioner's power to deport cannot be said to be rightly exercised if based on the sole fact that in deportation proceedings the prisoner refuses to do so, may be taken into consideration in ordering his deportation.[69] Commissioners have the right in deportation proceedings to consider depositions taken *de bene esse*;[70] but they are not courts of the United States in the sense of the Constitution and laws.[71]

The power with which commissioners in deportation cases are vested by section 12 of the Act of May 6, 1882, section 13 of the Act of September 13, 1888, and section 3

[64]Toy Tong *et al.* v. United States, 146 Fed. 343.

[65]United States v. Long Hop, 55 Fed. 58.

[66]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121; Fong Mey Yuk v. United States, 113 Fed. 898; Yee Ngoy v. United States, 116 Fed. 333.

[67]United States v. Tom Wah, 160 Fed. 207, affirmed by Circuit Court of Appeals, 163 Fed. 1008.

[68]United States v. Leung Shue, 126 Fed. 423.

[69]United States v. Moy You, 126 Fed. 226.

[70]*In re* Lam Jung Sing, 150 Fed. 608.

[71]*Ex parte* Lung Wing Wan, 161 Fed. 211; see Chin Bak Kan v. United States, 186 U. S. 193, 200, 46 Law Ed. 1121.

of the Act of March 3, 1901, is that of issuing a warrant on complaint duly made under oath on behalf of the United States by one of the officers designated in the last-mentioned act, to hear the cause based on such complaint, and, upon a hearing, to find and adjudge the Chinese brought before them to be either lawfully or unlawfully in the United States and, if the latter, to order deportation. While clothed with full authority by law to hear and pass on deportation cases, the commissioner is under no obligation to do so in the face of a refusal by the Comptroller of the Treasury to pay him his lawful fees.[72] If he has no judicial knowledge of the fact that funds for the deportation of an alien brought before him in deportation proceedings are unavailable, he will order deportation in spite of the assurance by the Attorney General that the funds are not available.[73] The Act of May 5, 1892, as amended by that of November 3, 1893, which provides that Chinese laborers who, within the period assigned in the act, have not taken out certificates of registration as therein required shall be taken before a "United States judge" whose duty it shall be to order them deported in the absence of proof to the satisfaction of said judge that their failure to register was excusable as by law provided, and that they were residents of the United States prior to May 5, 1892, was construed to apply to United States commissioners as included in the term "United States judge," and to vest them with power to deport in proper cases.[74]

Section 1 of the Act of March 3, 1901, provides that it shall be lawful for the district attorney of the district in which any Chinese person may be arrested to designate the United States commissioner within said district before

[72]United States v. Lee Lip *et al.*, 100 Fed. 842.

[73]*In re* Lintner, 57 Fed. 587; United States v. Chum Shang Yuen, 57 Fed. 588.

[74]Fong Mey Tuk v. United States, 113 Fed. 898; Yee Ngoy v. United States, 116 Fed. 333; *In re* Wong Fock, 81 Fed. 558; Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121.

whom such Chinese person shall be taken for a hearing. In a recent case[75] the Circuit Court of Appeals for the Fifth Circuit held that a Chinese laborer who was found by a Chinese inspector working in the State and District of Mississippi and was induced (although without force or duress) to accompany the inspector to New Orleans in the District of Louisiana, and, failing to secure and produce there, as he said he could, a certificate showing his right to be and remain in the United States, was detained and arrested on a warrant obtained from a commissioner attached to the district court for the District of Louisiana, was arrested illegally; and the court discharged the laborer from custody without prejudice to his arrest in the district in which he belonged. The soundness of this decision may be doubted, however, for two reasons: (*1*) It is apparent that the acts of 1882, 1888, and 1893, did not contemplate that the authority to arrest Chinese should be limited in the manner set forth in this decision;[76] and an examination of the House of Representatives committee's report with which the bill which became the Act of 1901 was submitted to the House, and the record of the debates thereon, shows that the purpose of the measure was not to change the practice allowed under the previous acts, but to permit the United States attorneys to select in each instance of arrest the commissioner before whom the Chinese should be tried, and not permit the Chinese and those engaged in their unlawful entry to make their own selection to the disadvantage of the Government, as had frequently happened, particularly in the Northern District of New York, the United States attorney for which suggested the passage of the measure;[77] and (*2*) the Chinese alien Chin Tong was not actually "arrested" until he had come into the Louisiana District.

[75]United States v. Chin Tong, 192 Fed. 485.

[76]United States v. Long Hop, 55 Fed. 58.

[77]H. R. Report 2156, 56th Cong., 2d Sess.; Vol. 34 Cong'l Rec., pp. 298, 749, 3408, 3436, 3441, 3483.

The Supreme Court has held that a United States commissioner is authorized to pass on the question whether or not a Chinese person brought before him is a citizen of the United States.[78] He is, however, without jurisdiction to pass on the question whether the holder of a certificate issued under the Act of November 3, 1893, obtained the same by fraud.[79] It is settled, also, that the power of the commissioner to deport Chinese persons unlawfully in the United States was unaffected by the articles of the Treaty of the United States with China of December 8, 1894.[80] The authority of the commissioner when exercised with direct regard to the prisoner must be limited to his deportation or detention incident thereto, and he has no power to inflict imprisonment at hard labor on any alien adjudged by him to be deported,[81] or where indefinite imprisonment would result from the lack of legislative means to deport.[82] The power conferred on the commissioner by the Chinese exclusion acts is ample to try the cases designated therein, and no order of a district judge referring such case to the commissioner for hearing is either required or authorized;[83] nor is the power to pass on a particular case taken away by the fact that, at a date preceding that on which the defendant was brought before the commissioner for trial, a deputy collector refused him admittance into the United States, but entered no decision, made no findings, and heard no evidence to rebut the prima facie showing made by defendant of his right to enter.[84] The power of a commissioner to deport a Chinese person brought before him in deportation proceedings,

[78]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121.

[79]*In re* See Ho How, 101 Fed. 115.

[80]United States v. Lee Yen Tai, 185 U. S. 213, 46 Law Ed. 878.

[81]Wong Wing v. United States, 163 U. S. 228, 41 Law Ed. 140; *In re* Ah Yuk, 53 Fed. 781.

[82]*In re* Ny Look, 56 Fed. 81.

[83]United States v. Lee Lip *et al.*, 100 Fed. 842; United States v. Hom Hing, 48 Fed. 635.

[84]United States v. Wong Chung, 92 Fed. 141.

where the right of the latter to remain is not shown to the commissioner's satisfaction, gives him a wide discretion in determining the existence of the right. This discretion has its limits, however. The evidence required from the defendant in deportation proceedings must only be sufficient to satisfy the judgment of a reasonable man, considering the same fairly and impartially. A commissioner may not arbitrarily, capriciously, or against reasonable unimpeached and credible evidence, uncontradicted on its material points, and susceptible of but one fair construction, refuse to be satisfied.[85]

(d.) Effect of Commissioner's findings.

A decision rendered on the merits in deportation proceedings discharging the defendant is final and conclusive of the Chinese alien's right to remain[86] in the absence of fraud or bad faith on the part of the commissioner.[87] His order of deportation may be appealed from by the defendant, as a matter of right, and the facts on which it was based will be considered *de novo* by the district court.[88] His judgment of deportation will stand if not obviously against the weight of the testimony. But the judgment of a commissioner discharging a Chinese alien by consent of the United States attorney is not a judgment on the merits, and not conclusive as to the alien's right to remain in the United States,[89] nor is a written statement by a former United States commissioner that the Chinaman has the right to be in the United States a judgment conclusive of such fact or even evidence of such judgment;[90] nor is his written statement that the Chinese per-

[85]United States v. Lee Huen, 118 Fed. 442; United States v. Hung Chang, 134 Fed. 19.

[86]United States v. Yeung Chu Keng, 140 Fed. 748; Leung Jun v. United States, 171 Fed. 413.

[87]United States v. Yeung Chu Keng, *supra.*

[88]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.

[89]*Ex parte* Loung June, 160 Fed. 251, but *cf.* Leung Jun v. United States, 171 Fed. 413, *contra.*

[90]*Ex parte* Lung Foot, 174 Fed. 70.

son has been adjudged to have the right to remain evidence of the adjudication; nor does it constitute the certificate of residence required by the Act of November 3, 1893.[91] The judgment of a commissioner in deportation proceedings not rendered on the merits is not the equivalent of a certificate;[92] and a certificate issued by him stating that a Chinese person is a United States citizen is not legal evidence of the facts on which it is based,[93] but the judgment of deportation rendered by a United States commissioner is proper evidence to go before the grand jury on which to sustain an indictment of criminality for assisting into the United States Chinese persons who had no right to be there.[94]

(e.) Order of Deportation, Sufficiency of.

It is enough if the order shows that the person to be deported has been adjudged to be unlawfully in the United States, without a finding stating whence he came, as the specification of the country to which he is to be deported concludes any inquiry on that point; nor need the order of deportation specifically refer to the act of Congress under which defendant is held to be unlawfully in the United States.[95] If, in addition to the order, the commissioner further directs that the alien be taken to a United States judge for a review of the proceedings and that "proper order of deportation be made," this instruction being unnecessary, will be treated as surplusage.[96] Where the district court finds that the accused is a Chinese laborer and is a subject of the Emperor of China, not registered, and not a member of the exempt class, these facts, stated in the order, are

[91] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.
[92] *Ex parte* Loung June, 160 Fed. 251.
[93] *Ex parte* Lung Wing Wun, 161 Fed. 211.
[94] United States v. Hills, 124 Fed. 831.
[95] *In re* Tsu Tse Mee, 81 Fed. 562.
[96] *In re* Wong Fok, 81 Fed. 558.

sufficient to warrant deportation thereon,[97] and the same result follows when in proceedings against a Chinese person on the charge of "being unlawfully in the United States" the court finds that he entered unlawfully and was therefore unlawfully in this country.[98] Where the court's order of deportation is impossible of execution it will be vacated by the court.[99] The Chinese exclusion acts do not give a commissioner the right to file separate findings which do not form part of the record after making and filing the certified transcript of the record before him—and such findings can serve as no basis for the deportation of the appellant in the case.[100]

(f.) Appeals.

(1.) To the District Court.

(a.) *Nature of, in general.*

Section 13 of the Act of September 13, 1888, provides that any Chinese person or persons of Chinese descent "convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court." Section 6 of the Act of May 5, 1892, as amended by the Act of November 3, 1893, provides for the arrest of Chinese persons found in the United States without the certificate of residence required by the act before a United States judge. The term "United States judge" as used in this act has been held to include a United States commissioner.[1] The Act of September 13, 1888, which was passed in contemplation of the ratification of a pending treaty with China that was never ratified, was held none the less, with regard to those sections thereof, including section 13, which were not dependent for their enforcement on the

[97]Lee Won Jeong v. United States, 145 Fed. 512.

[98]*In re* Gut Lun, 83 Fed. 141.

[99]United States v. Ah Toy, 47 Fed. 305.

[100]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.

[1]Chin Bak Kan v. United States, 186 U. S. 193, 46 L. Ed. 1121; Fong Mey Yuk, 113 Fed. 898.

ratification of the treaty, to have gone in force on the passage of the act and to have remained in force ever since.[2] The acts of April 29, 1902, and April 27, 1904, expressly re-enacted, extended, and continued these sections, including section 13.

The "appeal" allowed by section 13 of the Act of September 13, 1888, amounts to the granting of a trial *de novo* in the district court, where the defendant may again introduce the witnesses heard before the United States commissioner and present such additional evidence, documentary or testimonial, as he pleases.[3] If the appeal is not taken within the time specified by the act, viz., ten days, it will be regarded as abandoned.[4]

It has been held that the right of appeal granted by section 13 of the Act of 1888 is for the benefit of the alien alone and does not extend to the Government.[5] A question has been raised, however, as to whether section 25 of the new Judicial Code, effective January 1, 1912[6] reading: "The district courts shall have appellate jurisdiction of the judgments and orders of United States commissioners in cases arising under the Chinese exclusion laws," does not effect a change in this situation, and not only allow the Government as well as the alien the right of appeal from the commissioner's decision, but also require that the case appealed shall be heard in the district court on the record formed below. Taking the language of the section in its ordinary meaning, it is at least open to such a construction, especially as it must be regarded as having been enacted with knowledge by the legislators of the holdings of the courts under the previously existing law. But examination of the committee report with which the new Judicial Code was submitted to Congress[7] shows quite

[2] p. 637, *infra*.
[3] Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed 888.
[4] United States v. Yuen Yee Sum, 153 Fed. 494.
[5] United States v. Mar Ying Yuen, 123 Fed. 159.
[6] 36 Stat. L. 1087, 1094.
[7] Report No. 388, Part 1, Calendar No. 372, 61st Cong., 2d Sess.

clearly, it is thought, that there was no intent to change the existing law in this respect. The committee said: "This section merely states, in concise terms, the jurisdiction *now* vested in the district and circuit courts to review the orders of United States commissioners in Chinese deportation cases."

The right of appeal enjoyed under section 13 of the Act of 1888 was not taken away by the Act of May 5, 1892, as amended by that of November 3, 1893, which did not include any specific provision as to appeal;[8] nor did the fact that the proposed treaty with China of 1888 was not ratified affect the right of appeal of those proceeded against for deportation under this section.[9]

Proceedings under this section, although before a United States commissioner, who is a quasi-judicial officer, and on appeal to the district court and the circuit court of appeals, are none the less proceedings *sui generis* of an anomalous and summary character,[10] and as has already been stated, constitute merely a method for the removal from the United States of aliens who are not lawfully here. They do not constitute "causes" as the word is used in the Revised Statutes of the United States,[11] nor are they criminal proceedings. There is, therefore, no right to a jury trial, even on appeal to the district court.[12] Owing to the nature of the proceedings, it has been held that it is not error on the part of the district court to have an alien who has been brought before it on deportation proceedings testify without taking oath to facts whereby the establishment of his United States citizenship is sought to be proven;[13] but the deportation of a Chinese person lawfully admitted into the United States on a student's certificate cannot be ordered by the district court on a transcript of

[8]United States v. Wong Dep Ken, 57 Fed. 203.
[9]United States v. Jim, 47 Fed. 431.
[10]Chow Toy v. United States, 112 Fed. 354.
[11]Toy Tong v. United States, 146 Fed. 343.
[12]United States v. Ngum Lum May, 153 Fed. 209.
[13]Lee Yuen Sue v. United States, 146 Fed. 670.

the proceedings before a commissioner not containing findings, or where separate findings of the commissioner were introduced without an order of the court.[14] The jurisdiction of the district court on appeal taken from an order of deportation issued by the United States commissioner is not ousted, where the parties are before the court, by objections to the validity of the arrest;[15] nor does the district court lose its jurisdiction in deportation proceedings because of the failure on the part of the United States commissioner to certify his judgment to the court.[16] The jurisdiction of the district judge is limited to appeals from his own district, and he cannot therefore allow an appeal from another district.[17] It has been held that a district court has no power to direct the issue of a *dedimus potestatem* to take testimony for use in deportation proceedings;[18] but the soundness of this case may be seriously doubted, as it has been held in a later decision rendered, (unlike the earlier) after the principle had been generally recognized that deportation proceedings are civil in nature, that depositions *de bene esse* may be used in such proceedings, such right being conferred by section 863, Revised Statutes,[19] and the right to issue the *dedimus* being a necessary incident to the taking and introduction of the depositions.[20] As a matter of fact, the practice has now become quite common to use a *dedimus potestatem* in these proceedings. The term "United States judge," within the meaning of the exclusion acts, includes the justices of the Supreme Court of the District of Columbia.[21]

(b.) *How Taken.*

The appeal allowed by section 13 of the Act of

[14]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.
[15]Toy Tong v. United States, 146 Fed. 343.
[16]United States v. Wong Ock Hong, 179 Fed. 1004.
[17]United States v. Moy Yee Tai, 109 Fed. 1.
[18]United States v. Hom Hing, 48 Fed. 635.
[19]U. S. Comp. Stat., 1901, p. 661.
[20]*In re* Lam Jung Sing, 150 Fed. 608.
[21]19 Appeals D. C. 290.

September 13, 1888, "to the judge of the district court," is an appeal to the district court and not to the judge as an individual.[22] The district judge must direct his order to be entered by the clerk of the court,[23] and the district court acquires no jurisdiction unless the appeal is taken within ten days from the conviction.[24] It is a special privilege, and the statute conferring it must be strictly construed.[25] And if the appellant fails to enter and file the transcript on or before the day of citation, as required by the rules of the circuit court of appeals, the appellee is entitled on petition to have the case docketed and dismissed.[26] No formal method of taking the appeal is prescribed by the statute, except the provision setting out the period in which the appeal must be taken; thus an order allowing the appeal from the United States commissioner is unnecessary and, if allowed, does not affect the validity thereof.[27] If oral notice of appeal is given the commissioner within the statutory period it is sufficient; but the mere appearance of an attorney giving notice of an appeal does not constitute an appeal.[28] An appeal lies not only from an order of deportation by the commissioner, or from the judgment of the district court affirming such order, but as well from a refusal to grant a motion for a new trial,[29] as the commissioner, not the district court, is the person to whom the motion should be presented should the defendant choose to avail himself of this mode of procedure; but the application must be submitted promptly or any apparently undue delay explained.[30]

[22]The United States, Petitioner, 194 U. S. 194, 48 Law Ed. 931; United States v. Hung Chang, 130 Fed. 439.

[23]United States v. Hung Chang, *supra.*

[24]United States v. Yuen Yee Sum, 153 Fed. 494.

[25]United States v. See Ho How, 100 Fed. 730.

[26]Wong Sang v. United States, 144 Fed. 968.

[27]United States v. Loy Too, 147 Fed. 750; Chow Loy v. United States, 112 Fed. 354.

[28]*In re* Loy, 110 Fed. 952.

[29]United States v. Ng Young, 126 Fed. 425.

[30]United States v. Ng Young, 126 Fed. 425.

(e.) *Notice of Appeal*

Consists of notice given to the commissioner orally within ten days and entered of record. When so given it is not necessary that the matter shall be presented to the judge within the ten days to preserve appellant's right to a hearing on review.[31] In the absence of a rule of court requiring it, an order of the judge allowing the appeal is unnecessary, the service of a notice of appeal on the commissioner and district attorney and the filing of such notice with the clerk being sufficient.[32] But an order of the judge is necessary to stay the execution of the commissioner's order pending appeal,[33] and the fact that notice of appeal is entitled in the district court instead of before the commissioner, does not affect its sufficiency.[34]

(d.) *Effect of.*

The effect of an appeal taken from the United States commissioner is to create an opportunity for a hearing *de novo* on all the facts[35] and cannot be made on a transcript of proceedings before the United States commissioner,[36] and the defendant cannot be lawfully ordered deported until after such hearing has been had,[37] and the court itself must determine whether or not the evidence is satisfactory.[38] The judgment of the commissioner is not vacated, but is merely suspended, together with all proceedings thereunder, until the case is dismissed. And in case an appeal is taken to a higher tribunal the original

[31]Chow Loy v. United States, 112 Fed. 354.

[32]*Ibid.*

[33]United States v. Loo Toy, 147 Fed. 750, affirmed in 152 Fed. 1022.

[34]United States v. Wong Ock Hong, 179 Fed. 1004.

[35]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888; United States v. Louie Lee, 184 Fed. 651.

[36]United States v. Wong Ock Hong, 179 Fed. 1004.

[37]Liu Hop Fong v. United States, 209 U. S. 453, 52 Law Ed. 888.

[38]Quong Sue v. United States, 116 Fed. 316.

judgment stands in suspense until the appellate court, by a judgment of its own, shall supersede it.[39] Thus the applicant cannot be deported until after determination of the appeal;[40] but on appeal an order of the judge is necessary to stay execution of the commissioner's order of deportation.[41] And on appeal from an order in *habeas corpus* proceedings discharging the petitioner, but requiring him to give bail for his appearance, as may be determined by any final order made on appeal, the portion of the order admitting appellee to bail will not be taken up for consideration on a motion in advance of the regular hearing unless for special reasons.[42]

(e.) *Abandonment of.*

An appeal may be deemed abandoned when not taken within the period prescribed by statute. Thus when the judgment of the commissioner was rendered on May 24, and notice of appeal given on July 11, and the attention of the judge of the district court not called thereto until the last week in July, the appeal was held abandoned and the dismissal thereof proper.[43]

2. To the Circuit Court of Appeals.

By the terms of the Evarts Act[44] an appeal lies to the circuit court of appeals from a decision rendered by a district court of the United States in certain specified classes of cases, and it is under the terms of this general provision that appeals are taken from decisions rendered in Chinese deportation proceedings by District Courts, either as the result of the suing out of a writ of *habeas corpus,* or of a warrant of arrest having been secured in the first instance from the

[39] 22 Op. Atty. Gen. 340.
[40] United States v. Louie Lee, 184 Fed. 651.
[41] United States v. Loo Toy, 147 Fed. 750, affirmed in 152 Fed. 1022.
[42] United States v. Yee Yen Tai et al., 108 Fed. 950.
[43] Chow Loy v. United States, 112 Fed. 354.
[44] 26 Stat. L. 828, Sec. 4; Comp. Stat. 1901.

district judge, or of the "appeal" of the case to the district court from a decision of a United States commissioner ordering deportation. Cases arising under the general immigration law which are taken into the courts by writ of *habeas corpus,* sued out either after a hearing before a board of special inquiry[45] or a hearing before an officer or officers designated by the Secretary of Commerce and Labor in a warrant of arrest,[46] are appealed in the same manner as cases arising under the Chinese exclusion laws; so that most of what is said under this and the next subdivision is equally applicable to immigration cases, although naturally the majority of the cited decisions dealing with deportation are Chinese cases.

It was held in a recent decision of a circuit court of appeals that the appeal allowed by section 13 of the Act of 1888 is not limited to a right to appeal from a commissioner's or a district court's decision, but includes a further right to appeal from either a district or a circuit court of appeals' decision.[47] The leading decision on this subject was rendered in 1904, and is to the effect that, under section 6 of the Evarts Act of March 3, 1891,[48] an appeal lies to the circuit court of appeals from a judgment of a district court rendered on an appeal from an order of a commissioner for the deportation of a Chinese person arrested under section 13 of the Act of September 13, 1888.[49] But it has been held that the circuit court of appeals has not jurisdiction of a writ of error to an order of a judge for the deportation of a Chinese person, where no final order or judgment was entered in the district court, and the bill of exceptions allowed was not there filed, and the tran-

[45]See p. 621, *infra.*

[46]See p. 627, *infra.*

[47]Gee Cue Beng v. United States, 184 Fed. 383.

[48]26 Stat. L. 828; U. S. Comp. Stat., 1901, p. 549.

[49]Tsoi Yii v. United States, 129 Fed. 585; see also United States v. Hung Chang, 134 Fed. 19; and United States, Petitioner, 194 U. S. 194, 48 Law Ed. 931; United States v. Gee Lee, 50 Fed. 271.

script was certified by the district judge instead of by the clerk;[50] however, it was suggested by the circuit court of appeals that the district court had not lost jurisdiction by reason of this irregular procedure and should enter the order and direct the filing of the bill of exceptions.[51] That a writ of error designates the parties as plaintiff and defendant, following the title of the cause in the court below, is not a fatal error; nor does it affect the right to prosecute the proceedings for review, but it will be regarded as a clerical mistake only.[52]

If it is desired that the circuit court of appeals shall review a decision of a district court, such review must be sought by way of appeal,[53] and a writ of error from the circuit court of appeals to the district court which decided the case on appeal from the commissioner will not be granted.[54] The distinction between a writ of error and an appeal being jurisdictional, it canot be waived by the parties or disregarded by the court.[55] In a later case it was held that findings of a district court adverse to the right of a Chinese person to remain in the United States, on the claim of citizenship, cannot be reviewed on a writ of error where the evidence was not made a part of the record by a bill of exceptions.[56]

Although the Act of September 13, 1888, prescribes no set form of procedure governing the method of taking appeals, where irregularities in the court below are claimed for the first time in the circuit court of appeals, they are deemed to be waived by failure to object in the lower court.[57]

[50]United States v. Hung Chang, 130 Fed. 439.

[51]*Ibid.*

[52]H. Hackfeld & Co. v. United States, 141 Fed. 9; see also Mussina v. Groazos, 6 Wall. 355, 361.

[53]United States v. Hung Chang, 134 Fed. 19.

[54]Lee Lung On v. United States, 159 Fed. 125.

[55]Lee Lung On v. United States, 159 Fed. 125.

[56]Lew Moy v. United States, 164 Fed. 322.

[57]United States v. Lee Seick, 100 Fed. 398.

The fact that constitutional questions are involved in an appeal to the circuit court of appeals from a district or circuit court does not deprive the former of jurisdiction to sustain the appeal when other and additional questions are involved and determined therein.[58] It is provided by the Evarts Act[59] that "No appeal or writ of error by which any order, judgment or decree may be reviewed in the Circuit Court of Appeals under the provisions of this act shall be taken or sued out except within six months after the entry of the order, judgment or decree sought to be reviewed: *Provided, however,* That in all cases in which a lesser time is now by law limited for appeals or writs of error, such limits of time shall apply to appeals or writs of error in such cases taken to or sued out from the Circuit Court of Appeals."

3. To the Supreme Court of the United States.

Cases arising in the courts under the Chinese exclusion treaty and laws and the immigration law reach the Supreme Court of the United States in one of three ways:

(a.) *By appeal from a district or circuit court direct* to the Supreme Court, in which method, under the Evarts Act as amended,[60] cases of the following description arising out of the laws here discussed may be taken to the Supreme Court for review: (1) Those in which the jurisdiction alone is certified from the court below; (2) Those involving the construction or application of the Constitution of the United States; (3) Cases in which the constitutionality of any law of the United States or the validity or construction of any treaty made under its authority is drawn in question.

No appeal lies until final judgment has been rendered in the lower court.[61] Where a constitutional question is

[58] *In re* Can Pon, *et al.*, 168 Fed. 479, and cases therein cited; Spreckles Sugar Refining Co. v. McClain, 192 U. S. 397, 407, 48 Law Ed. 496.

[59] 26 Stat. L. 829; Comp. Stat., 1901.

[60] 26 Stat. L. 827; Comp. Stat., 1901.

[61] McLish v. Roff, 141 U. S. 661, 35 Law Ed. 893.

raised the Supreme Court will review all questions involved in the case, not merely the constitutional one.[62] When a constitutional question has been settled by a unanimous decision of the Supreme Court, it cannot be the subject of another appeal.[63] If an appeal is taken to and argued in the circuit court of appeals, which has jurisdiction on other grounds, in a case in which constitutional questions are involved, the right to an immediate appeal to the Supreme Court will be considered waived.[64] The construction or application of the Constitution of the United States is involved in the question whether Departmental regulations may constitutionally have the force of law.[65]

No appeal to the Supreme Court from a circuit or district court will be allowed unless taken within two years from the date of such lower court decision.[66]

(b.) *By certification from the circuit court of appeals.*

Under the Evarts Act[67] the circuit court of appeals may, with respect to every subject within its appellate jurisdiction, certify to the Supreme Court at any time any questions or propositions of law covering which it desires the instruction of that court for its proper decision; and thereupon the Supreme Court may either give the requested instruction, or may require the entire case to be sent up and decide it in the same manner as though it had come

[62]Ekiu v. United States, 142 U. S. 651, 35 Law Ed. 1146; Horner v. United States, No. 2, 143 U. S. 570, 36 Law Ed. 266; Carey v. Houston & T. C. R. Co., 150 U. S. 170, 37 Law Ed. 1041; Penn Mutual L. Ins. Co. v. Austin, 168 U. S. 685, 42 Law Ed. 626.

[63]Sloan v. United States, 193 U. S. 614, 48 Law Ed. 814; Farrell v. O'Brien, 199 U. S. 89, 50 Law Ed. 101; Harris v. Rosenberger, 145 Fed. 449.

[64]Carter v. Roberts, 177 U. S. 496, 44 Law Ed. 861; Am. Sugar Refin. Co. v. New Orleans, 181 U. S. 277, 45 Law Ed. 859; Cary Mfg. Co. v. Acme Flex. Clasp Co., 187 U. S. 427, 47 Law Ed. 244; Ayres v. Polsdorfer, 187 U. S. 585, 47 Law Ed. 314; McKenzie v. Pease, 146 Fed. 743.

[65]Boske v. Comingore, 177 U. S. 459; 44 Law Ed. 846.

[66]U. S. R. S., Sec. 1008; Allen v. So. Pac. R. Co., 173 U. S. 479, 43 Law Ed. 775; Holt v. Indiana Mfg. Co., 176 U. S. 68, 44 Law Ed. 374.

[67]26 Stat. L. 828,

up by appeal or writ of error. Where a judgment of the circuit court of appeals involves the effect of the Chinese exclusion acts on Chinese merchants domiciled in this country who temporarily leave it *animo revertendi,* and also the effect of our treaties with China, the question is a proper one to be certified to the Supreme Court for instructions.[68] A good illustration of this method consists of the case of United States v. Ju Toy,[69] especially because of the clearness with which the questions are stated; it being required that questions certified shall each consist of a single question of law[70] and that they must not be questions of mixed law or fact.[71] A jurisdictional question,[72] and one in which is involved the construction or application of the Constitution[73] may be so certified where the circuit court of appeals has jurisdiction of the case.

(c.) *By writ of certiorari*

from the Supreme Court, directed to the circuit court of appeals. In any case in which the decision of a circuit court of appeals is final, the Supreme Court may require, "by *certiorari* or otherwise," any such case to be certified to it "for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court,"[74] and similar power exists to review the decisions of the court of appeals of the District of Columbia.[75] The Supreme Court will issue a *certiorari,* under the provisions above described, where grave or important questions are involved, or in the interest of uniformity of de-

[68] *Ex parte* Lau Ow Bew, 141 U. S. 583, 589, 35 Law Ed. 868.

[69] 198 U. S. 253, 49 Law Ed. 1040.

[70] McHenry v. Alford, 168 U. S. 651, 42 Law Ed. 614.

[71] Warner v. New Orleans, 167 U. S. 467, 42 Law Ed. 239.

[72] United States v. Jahn, 155 U. S. 109, 39 Law Ed. 87; McLish v. Roff, 141 U. S. 661, 668, 35 Law Ed. 893.

[73] Am. Sugar Refin. Co. v. New Orleans, 181 U. S. 277, 45 Law Ed. 859.

[74] 26 Stat. L., 828.

[75] 29 Stat. L. 692; D. C. Code, Sec. 234; 31 Stat. L. 1189; Sinclair v. D. C. 192 U. S. 16, 21, 48 Law Ed. 322.

cision;[76] and where the judgment of a circuit court of appeals in a *habeas corpus* case involves the effect of the Chinese exclusion acts on the question of domicile of Chinese merchants in this country, and also the effect of the treaty with China.[77] Usually it will be issued where questions of international importance are involved;[78] and where there is a difference of opinion between different circuit courts of appeal.[79] The Supreme Court cannot issue a *certiorari* when it has appellate jurisdiction to review the case by appeal or writ of error,[80] and the *certiorari* may be issued whether or not the advice of the Supreme Court is sought,[81] whereupon the court will decide the whole matter in controversy.[82]

No appeal lies to the Supreme Court from a decision by a circuit court of appeals regarding an application for the writ of habeas corpus, for such a matter cannot be "measured in money."[83]

No application to review a decision of a circuit court of appeals by writ of *certiorari* will be allowed by the Supreme Court unless made within one year of the entry of the order, judgment, or decree sought to be reviewed.[84]

Questions frequently arise under the Evarts Act as to whether a case decided in a circuit court should be taken taken for review to the Supreme Court direct or to the circuit court of appeals. If the sole ground of Federal jurisdiction is that there is a controversy arising under the United States Constitution, the Supreme Court has appellate jurisdiction exclusive of the circuit court of ap-

[76] *In re* Woods, 143 U. S. 202, 206, 36 Law Ed. 125.

[77] *Ex parte* Lau Ow Bew, 141 U. S. 583, 35 Law Ed. 868; Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.

[78] *Ex parte* Lau Ow Bew, 141 U. S. 583, 35 Law Ed. 868; United States v. The Three Friends, 166 U. S. 1, 41 Law Ed. 897.

[79] Columbus Watch Co. v. Robbins, 148 U. S. 266, 37 Law Ed. 445.

[80] Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.

[81] *Ibid.*

[82] Loewe v. Lawler, 208 U. S. 274, 52 Law Ed. 488.

[83] Lau Ow Bew v. United States, 144 U. S. 47, 36 Law Ed. 340.

[84] 28 Stat. L. 828; The Conquerer, 166 U. S. 110, 41 Law Ed. 937.

peals,[85] although other questions may be involved.[86] In cases of this nature usually the Supreme Court will reverse the decree without passing upon the merits.[87]

3. *Reversal of Findings on Appeal.*

As a general rule the decision of a commissioner or lower court will not be reversed on questions of fact unless shown to be clearly contrary to the evidence submitted.[88] Thus a circuit court of appeals will not reverse findings made below when the United States commissioner's order of deportation has been affirmed by a district court, unless the findings of that court show clearly that the affirming decision was incorrect,[89] as, for instance, where it appears that the evidence given before the commissioner was candid and consistent and the witnesses giving it were unimpeached.[90] The question of fact whether or not a Chinese person is lawfully in the United States will not be re-examined by the Supreme Court when such question has been decided adversely to the alien by the commissioner, whose finding has been affirmed by the district court, merely because the construction of a treaty with China is drawn in question—a fact which ordinarily is regarded as giving the Supreme Court jurisdiction to dispose of all questions arising in such a case.[91] Nor will a commissioner's decision ordering deportation be disturbed on appeal unless it is so clearly against the weight of evidence as to justify a cir-

[85]Am. Sugar Refin. Co. v. New Orleans, 181 U. S. 277, 281, 45 Law Ed. 859.

[86]Owensboro v. Owensboro Waterworks, 115 Fed. 318; but see Pikes Peak Power Co. v. Col. Springs, 105 Fed. 1.

[87]Union & Planters' Bank v. Memphis, 189 U. S. 71, 74, 47 Law Ed. 712.

[88]Chin Bak Kan v. United States, 186 U. S. 193, 46 Law Ed. 1121; Gong Nom Wood v. United States, 191 Fed. 830.

[89]Mar Sing v. United States, 137 Fed. 875; and see 153 Fed. 232.

[90]Mar Poy v. United States, 189 Fed. 288.

[91]Chin Bak Kan v. United States, *supra.*

cuit court of appeals in disregarding it;[92] nor where, although the evidence of the defendant to prove citizenship was not contradicted by the Government, it was so general as to afford the Government no opportunity for rebuttal.[93] But where the testimony of Chinese witnesses that a defendant has the right to remain in the United States is not impeached, the court can determine for itself the advisability of calling for further evidence as to the credibility of the witnesses, and a failure to call for such evidence does not constitute error, and the decision will not be reversed on appeal.[94] Where the commissioner finds that the Chinese person is lawfully in the United States, no right of review lies with the court in the absence of abuse on the part of the commissioner;[95] but such finding will be reviewed on appeal where the court has released a Chinese defendant who has failed to prove his right to remain by at least one credible white witness.[96] Where it appeared by the evidence before the commissioner

[92]Bak Kun v. United States, Ting Fong v. United States, 195 Fed. 53; Wong Heung v. Elliott, 179 Fed. 110; Yee King v. United States, 179 Fed. 368; United States v. Chu King Foon, 179 Fed. 995; Hong You *et al.* v. United States, 164 Fed. 330; Yee Yet *et al.* v. United States, 175 Fed. 565; Wong Chum v. United States, 170 Fed. 182; United States v. Chung Sun Fun *et al.*, 63 Fed. 261; United States v. Leung Sam, 114 Fed. 702; Gong Nom Wood v. United States, *supra;* Chu King Foon v. United States, 191 Fed. 822; Fong Gum Tong v. United States, 192 Fed. 320; Chin Ken *et al.* v. United States, 191 Fed. 817; Yuen Pak Sune v. U. S., 191 Fed. 825; but of late the view has more than once been expressed that, deportation cases being civil in nature, the test of whether a Chinese person alleging the right to remain because of his American citizenship depends on the preponderance of the evidence, even though the burden of proof is on the defendant to show his exempt status. Wong Jew Dip v. United States, 192 Fed. 471; United States v. Leu Jin, 192 Fed. 580; and where the right to remain is based on a "section 6" certificate duly issued by competent authority the Commissioner's excluding decision will be reversed if based on evidence which cannot be reasonably construed to controvert the fact of the defendant's mercantile status as set forth in the certificate. United States v. Chin Chong Pong, 192 Fed. 722.

[93]Kum Sue *et al.* v. United States, 179 Fed. 370.

[94]Woey Ho v. United States, 109 Fed. 888.

[95]United States v. Yeung Chu Keng, 140 Fed. 748.

[96]United States v. Yee Gee You, 152 Fed. 157.

that a Chinese person ordered deported by him is a citizen of the United States, the order of deportation will be reversed,[97] and the Supreme Court will reverse a judgment of deportation by a district court, when the record shows the Chinese ordered deported under the Act of May 5, 1892, as amended, were merchants as a matter of law during the registration period;[98] but a re-examination of facts to determine whether or not a Chinese person is lawfully in the United States, when the question has been decided adversely to him by the United States commissioner and the district court will not be entered into by the Supreme Court on the alleged ground that the construction of a treaty with China being involved, the Supreme Court has authority[99] to dispose of the entire case.[100] It has also been held that findings of fact by a United States commissioner are not reviewable by a court on *habeas corpus*.[1] Where testimony was taken in the hearing before the commissioner without objection by the defendant, and an appeal was taken to the district court in which no objection was made to the commissioner's finding of facts, such action was held to constitute an implied assent to a hearing before the court on an agreed statement of facts.[2] Where a Chinese defendant's own testimony as to whether he was born in China or in the United States is conflicting, the finding of the commissioner adverse to him, confirmed by the district court, will not be reviewed by the circuit court of appeals,[3] and a Chinese defendant who made no denial of his nationality and no claim that he was within the exempted classes or that he was born in the United States, who stated that he had no counsel and did not

[97]United States v. Jhu Why, 175 Fed. 630.

[98]Tom Hong v. United States, 193 U. S. 517, 522, 48 Law Ed. 772.

[99]Under the Evarts Act, 26 Stat. at L. 827.

[100]Chin Bak Kan v. United States, 186 U. S. 193, 201, 46 Law Ed. 1121.

[1]United States v. Don On, 49 Fed. 569; *In re* Ah Yow, 59 Fed. 561; and see United States v. Lair, 195 Fed. 47.

[2]*In re* Chin Ark Wing, 115 Fed. 412.

[3]Chu King Foon v. United States, 191 Fed. 822.

want one then, and who on all other questions refused to answer, and stood mute, has no ground of appeal to the circuit court of appeals.[4] Where a Chinese defendant produced one witness at the trial and, although he knew of another, did not produce him, he was not entitled to a new trial to afford opportunity to produce the additional witness, and a district court refused to sustain an appeal from a commissioner's refusal to grant the new trial.[5]

IV. Release Under Bail or Other Bond.

1. *Of Aliens Applying to Enter.*

(a.) Under the Immigration Law.

1. For Permanent Purposes.

(a.) *Under "public charge" bond.*—By section 26 of the immigration law the Secretary of Commerce and Labor is vested with discretion to admit "upon the giving of a suitable and proper bond or undertaking" aliens likely to become a public charge or suffering with "physical" disability other than tuberculosis or a loathsome or dangerous contagious disease." Under rule 17 of the immigration rules[6] the application must be submitted promptly and the bond must be in the sum of $500 unless special instructions to the contrary are given.

It has been held that the acceptance of a public charge bond is wholly within the discretion of the Secretary of Commerce and Labor, and, therefore, it is not competent for a court to inquire by writ of *habeas corpus* into the matter.[7] In at least one instance a court held, even before the law contained any affirmative authority to accept public charge bonds, that a bond taken to insure the people of the United States against an alien's becoming a public charge is good and may be enforced in the courts.[8]

[4]Chin Kin *et al.* v. United States, 191 Fed. 871.
[5]United States v. Ng Young, 126 Fed. 425.
[6]Subds. 5 and 6.
[7]United States *ex rel.* Chanin v. Williams, 177 Fed. 689.
[8]United States v. Lipkis, 56 Fed. 427.

A bond prescribed by statute must comply substantially with the terms of the statute[9] unless sustainable as a valid contract at common law[10] which would be only if executed by competent parties[11] in a form not prohibited by statute,[12] and if for a lawful purpose not contrary to public policy, and for sufficient consideration;[13] and, if conditions are superadded beyond what the law requires, it will be declared void as to those conditions if separable from those required by law,[14] or if not separable the bond will be declared void as a whole.[15]

(b.) *Under "school attendance" bond.*—By section 2 of the immigration act children under sixteen years of age unaccompanied by a parent are excludable "at the discretion of the Secretary of Commerce and Labor or under such regulations as he may from time to time prescribe." The practice has become well established in enforcing this section and rule 6 of the immigration rules drawn thereunder, to require a bond, if the young child is admitted, such bond providing against the child's becoming a public charge, and that he shall be kept in day school and not be placed at unsuitable employment until he reaches the age of sixteen.

While the law does not specifically authorize the taking of a bond in this class of cases, there is hardly room for doubt that a bond given therein is enforceable,[16] as it undoubtedly is a "voluntary bond" as distinguished from a bond extorted *"colore officii."*

[9]United States v. Bradley, 10 Pet. 343.

[10]Kountze v. Hotel Co., 107 U. S. 378, 27 Law Ed. 609.

[11]United States v. Linn, 15 Pet. 290.

[12]United States v. Hodson, 10 Wall. 395.

[13]United States v. Linn; United States v. Hodson; United States v. Bradley, *supra.*

[14]United States v. Bradley, *supra.*

[15]Daniels v. Tearney, 102 U. S. 415, 26 Law Ed. 187.

[16]United States v. Tingey, 5 Pet. 115, 8 Law Ed. 66; United States v. Bradley, 10 Pet. 343, 9 Law Ed. 448; United States v. Hodson, 154 U. S. 580, 19 Law Ed. 941; Moses v. United States, 166 U. S. 571, 41 Law Ed. 1119.

2. For Temporary Purposes.

(a.) *Transit of Japanese.*—Bonds are required, under Department of Commerce and Labor Circular No. 157, for Japanese who fall within the terms of the last proviso to section 1 of the immigration law and rule 11 of the immigration rules, and who desire to go through the United States in transit to some other country. A Treasury Department circular substantially to the same effect as rule 17 of the Chinese regulations, which deals with the similar subject of the transit through the United States of Chinese laborers, was upheld by the Supreme Court in the case of Fok Young Yo v. United States.[17]

(b.) *Treatment in hospital.*—Section 36 of the immigration act provides that any alien residing in this country who has declared his intention to become a citizen, and who may send for his wife or minor children, shall have the privilege of having the wife or child, if found upon arrival to be afflicted with any contagious disorder, held until it can be ascertained whether the disease is easily curable. This has been construed by the Department to refer also to the minor children of naturalized citizens, born prior to the naturalization of the parent; also to indicate that, in meritorious cases, the wife or child should not only be held until it can be ascertained whether the disease will be easy to cure, but allowed to enter hospital for treatment at the expense of the husband or father; the provision in section 19 of the act that "no alien certified.....to be suffering from tuberculosis or from a loathsome or dangerous contagious disease other than one of quarantinable nature shall be permitted to land for medical treatment thereof in any hospital in the United States, unless with the express permission of the Secretary of Commerce and Labor," being construed to allow of the submission of an application for treatment in hospital, not only on behalf of the wives and minor children mentioned,

[17]185 U. S. 296, 46 Law Ed. 917.

but of other aliens.[18] Such an application must be submitted promptly, the time allowed being the same as in the case of appeals.[19]

Such an application will not be granted unless the case is altogether meritorious, and the application must show: (1) That treatment is necessary to meet the ends of justice and humanity; (2) that applicant, or some one on his behalf, is willing and able to deposit at once a sum sufficient to pay for treatment for sixty days, or less if a shorter time is estimated as that within which a cure possibly may be effected, and to furnish bond of not less than $300 providing that at least fifteen days prior to the expiration of said period a further deposit will be made sufficient to cover cost of treatment for thirty days additional and a remittance of a similar amount fifteen days prior to the expiration of the period covered by this deposit and so on until the alien is cured and permanently landed or the case otherwise disposed of; the bond also to provide that a sum sufficient to defray the cost of forwarding the alien to final destination will be furnished when and if needed, and, in the event the alien is a person who, from infancy or other cause, will require an attendant to accompany him to final destination if landed, or to the country of origin, if eventually deported, that such an attendant or funds sufficient to defray the cost of employing one will be furnished.[20] In practice, admissions to hospital are kept at a minimum, on the theory that the general spirit of the law is opposed to action which tends to encourage the coming to United States ports of aliens who are diseased; and it is specially provided by the rule that admission for treatment shall not be regarded as a landing.[21]

[18] As stated, *ante*, p. 310, it is thought that under the law, entrance for hospital treatment can be claimed by such wives and minor children as a matter of right.

[19] Rule 19, subd. 1 and 2.

[20] Rule 19, subd. 2.

[21] Subd. 4.

Chinese aliens, who are admissible under the exclusion laws, but inadmissible because found to be afflicted with any one of the diseases inhibited by the immigration laws, are, of course, with respect to hospital treatment, accorded the same privilege as aliens of other races, in accordance with rule 19 of the immigration rules.

Another class of hospital cases arises out of Department of Commerce and Labor Decision No. 116, the immediate occasion for which was the desire of residents or citizens of Canada and other nearby countries to come into the United States for treatment in sanitariums for maladies a successful treatment of which is dependent more or less on climatic conditions existing where the sanitariums are located, especially tuberculosis. Entry for this purpose is allowed under conditions as to assurance of payment, bondings, etc., similar to those prescribed by rule 19, it also being required that proper precautions shall be taken to prevent any spread of contagion while the admitted alien is *en route;* and likewise for his departure from the United States at the termination of the treatment.

(c.) *Other temporary purposes.*—It is customary to admit, in the discretion of the Secretary, under bond conditioned for departure from the United States within a specified time, aliens who seek to enter for temporary purposes (such as to visit relatives or to transact business) and are not deemed eligibile to remain permanently, yet are not mandatorily excluded. Such bonds are drawn to include the public charge clause, and to require departure when the purpose of the temporary entry has been effected, a specific date being set as that on or before which departure must occur.

3. In connection with a writ of habeas corpus.

When a writ of *habeas corpus* is applied for on behalf of an alien denied admission to the United States, the alien of course usually remains in the custody of the immigration official in charge, or of the master of the vessel if he has already been placed on board a vessel of the line by

which he arrived, until the issue raised by the petition has been determined. Generally, it is only in the event that an appeal is taken from the decision of the district court on the petition, whether such appeal is on behalf of the petitioner or of the Government, that the question of releasing the alien under a bail bond arises. The court has an ancient inherent power to release such a person;[22] but this power is, of course, a discretionary one and may be exercised favorably or unfavorably, as the court pleases. In practice, especially at ports where the appeal may be expected to be determined expeditiously, the alien is usually left in the custody of the immigration officials, if their right to detain and deport him has been upheld by the court.

4. For use as witnesses.

By section 19 of the immigration act it is provided that the deportation of any alien found to have come in violation of any provision of the act may be suspended if the Commissioner General of Immigration is of opinion that such alien should be used as a witness in prosecuting an offender against the immigration law. As the law contains no provision for the release of such alien under bond, or for his compensation for time lost by being detained in confinement pending the trial of the case in which he is to testify, it is provided by regulation[23] that the case "must be promptly reported to the United States attorney with request that if he decides to institute proceedings he either take the deposition of the alien or secure a court order for his detention as a witness." In such case a court might, but it is apprehended would not often, release the alien under a bond conditioned for his production as a witness when needed The main purpose of the rule, however, insofar as it re-

[22]Wright v. Henkel, 190 U. S. 40, 51, 61, 47 Law Ed. 948; 3 A. & E. Encyc. 691; *In re* Chin Wah, 182 Fed. 256.

[23]Rule 25 and Bureau of Immigration and Naturalization Circular No. 29.

lates to aliens denied admission (as distinguished from those arrested within the country)[24] is to avoid the hardship and injustice of an extended detention without witness fees being paid to cover the time lost by their use as Government witnesses.

(b.) Under the Chinese Exclusion Laws.

There is no provision in the Chinese exclusion law or regulations for the acceptance of a bond in connection with the permanent landing of Chinese; in that connection bonds are taken for temporary purposes only.

1. Pending investigation and determination of status.

By Department of Commerce and Labor Circular No. 220 it is provided that Chinese who claim to be merchants, teachers, students, or travelers, whether coming to the United States for the first time or returning, as well as their wives and children if they are accompanied by the latter, may be admitted, in the discretion of the immigration official in charge at a port of entry for Chinese, under a bond conditioned for the production of the applicant or applicants when called for to enable the inspectors to make more thorough inspection and investigation regarding their status. If further investigation shows the claims to be true, the bond is cancelled; if it is found that the applicant is an impostor, his production is required and he is deported. This bond must be in the sum of $2,000 unless special instructions to the contrary are given in any case. This also is a "voluntary bond," and what has already been said[25] regarding the enforceability of "voluntary bonds" applies to the Circular 220 bond, as indeed it does to all of the non-statutory bonds taken by administrative officials in connection with proceedings arising under the immigration and Chinese exclusion laws.

2. For transit through the United States.

Chinese laborers who seek the privilege of passing

[24]See p. 664, *post.*

[25]*Ante,* pp. 653, 654.

through the United States to foreign territory are required by rule 17 of the Chinese regulations to give bond (which must be furnished by them, some responsible person on their behalf, or the transportation company whose through ticket is held by the applicant), "in the penal sum of $500, conditioned for applicant's continuous transit through and actual departure from the United States within a reasonable time, not exceeding twenty days from the date said privilege is granted." The validity of a circular of the Treasury Department which contained requirements regarding Chinese in transit similar to those specified in rule 17 was sustained by the Supreme Court in the case of Fok Young Yo v. United States.[26]

3. Of Chinese seamen discharged or on shore leave.

To prevent violation of law by Chinese seamen discharged or granted shore leave in ports of the United States, it is required, by rule 7 of the Chinese regulations, that "bond with approved security in the penalty of $500 for each such seaman shall be exacted for his departure from and out of the United States within thirty days." The exaction of this bond has the sanction of the courts—in fact the promulgation of the rule was the direct result of holdings by the courts to the effect that, while a Chinese seaman, so long as he is employed *bona fide* as such, is not excluded from entering the ports of the United States in the pursuit of his calling, his entry in that capacity affords so easy a means of violating the exclusion laws that the exaction of a bond to insure his and his employer's good faith is wholly justifiable.[27]

Moreover, the rule itself seems to have had the approval of Congress; for when H. R. 13031 had passed the House

[26]185 U. S. 296, 46 Law Ed. 917; see also *In re* Lee Gon Yung, 111 Fed. 998.

[27]*In re* Ah Kee, 22 Fed. 519; *In re* Jam, 101 Fed. 989; and failure to give such bond on the part of a Chinese seaman renders him deportable as a laborer who within thirty days after his release from hospital has failed in his efforts to reship. United States v. Wong Kee, 192 Fed. 583.

[28]57th Cong., First Sess.

with a provision similar to the rule, but requiring a bond in the sum of $2,000, included,[29] and after Senate Bill 2960[30] had been extensively debated in the Senate, Senator Platt of Connecticut introduced an amendment which, with slight changes, became the Act of 1893; and, in explaining his purpose in asking that his shorter measure be passed rather than the long and minutely detailed one which had received the approval of the House, used language plainly showing that it was his purpose to give legislative sanction and approval to the then existing regulations of the Treasury Department regarding the exclusion of Chinese, including the rule requiring bond to be furnished for seamen discharged or allowed shore leave, and to empower the Secretary to continue those regulations and change and extend them from time to time, as might be found necessary.[31]

In a recent case it has been held by a circuit court of appeals that a Chinese seaman might be released under a bond required by a court, and the bond would be valid and enforceable, where, the seaman being charged with violating the customs laws on a prior trip to the United States, is brought to trial for said offense and applies for enlargement on bail as a person charged with crime; that the fact that he was a "laborer" in the sense that he was performing manual labor as a seaman, did not make his release in the United States under bond illegal or justify relieving the sureties on the bond of their responsibility thereunder.[32]

4. In connection with the writ of habeas corpus.

Prior to the passage of the exclusion Act of May 5, 1892, the practice prevailed quite generally for Chinese seeking admission to the country to obtain release under a bail

[29]See p. 12, pt. 2, H. R. Report 1231, 57th Cong., 1st Sess., and pp. 3662, 3901-2, Vol. 35, Cong'l Record.

[30]57th Congress, 1st session.

[31]35 Cong'l Record 4245.

[32]United States v. Ah Fook *et al.*, 183 Fed. 33.

bond pending determination of their claimed right to enter.[33] So serious were the abuses arising from this practice that Congress provided in section 5 of the act mentioned: "That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of *habeas corpus,* by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay."

Even before the passage of the above-quoted provision, it was held that, where, after a Chinese applicant on whose behalf a hearing had been granted by a court under a writ of *habeas corpus* sued out to test the correctness of the administrative decision refusing the applicant the right to land, the applicant had been remanded to the administrative officials for deportation, and it was found that the vessel by which deportation was to be effected had sailed, the court had no authority to release the alien on her own recognizance.[34]

The courts have, of course, felt bound by the explicit terms of section 5 of the Act of 1892 to refuse bail "in the first instance" when application was made therefor by Chinese seeking to enter the country and denied that privilege, and on whose behalf an effort was made to overturn the administrative decision by a *habeas corpus* proceeding in court.[35] And, quite naturally, they have gone further, with respect to this matter and held that, inasmuch as by the specific terms of the act bail must be denied when applied for "in the first instance," there is all the better reason for refusing to enlarge on bail a Chinese applicant whose writ of *habeas corpus* has been dismissed and who

[33]Case of the Unused Tag—*In re* Ah Kee, 21 Fed. 701; *In re* Chow Goo Pooi, 25 Fed. 77.

[34]*In re* Ah Moy, 21 Fed. 808.

[35]*In re* Ong Lung, 125 Fed. 813; *In re* Chin Wah, 182 Fed. 256; *In re* Jem Yuen, 188 Fed. 350.

has applied for release under a bail bond pending the outcome of an appeal taken on his behalf to a higher court.[36] In the Jem Yuen case,[37] it being the avowed purpose of the applicant's attorney to ask for a review by the Supreme Court of the decision of the district court dismissing the writ, application was made to the district court for enlargement on bail pending the taking of the appeal to the Supreme Court, and this being refused, application was then made to a justice of the Supreme Court for the release of the alien on bail, but the refusal of the district court to grant the request was concurred in, and the applicant compelled to remain in confinement in the immigration station, pending decision of his case by the Supreme Court. (His appeal to that court was subsequently dismissed on motion of his counsel.) In disposing of the application for release on bail, the district judge, after a quite full review and discussion of the prior decisions on the subject, said: "As to such cases (of applicants for admission) I am unable to doubt that Congress intended to forbid admission to the country upon bail..... I should not consider myself justified in granting this application even if satisfied that I have the power to grant it by an exercise of discretion."

5. For use as witnesses.

There is no provision in the Chinese exclusion laws for the suspension of deportation of a rejected applicant in order that his testimony may be used in prosecuting offenders against the statute; but it often becomes necessary to use Chinese as witnesses against those who have attempted to smuggle them into the United States. When such a case arises it is customary to report the matter to the court having jurisdiction of the trial in which the alien's testimony is wanted; so that the court can issue a

[36] *In re* Chin Yuen Sing, 65 Fed. 788; *In re* Jem Yuen, 188 Fed. 350; see also argument of Solicitor General in Ah How v. United States, 193 U. S. 65, 74, 48 Law Ed. 619.

[37] 188 Fed. 350.

proper order, either for the holding of the witness at the station where detained by immigration officials, or for his release under bond insuring his appearance as a witness, according to the manner in which the court deems its discretion should be exercised.

2. *Of Aliens Arrested Within the Country.*

(a.) Under the Immigration Law.

1. Pending issuance of deportation warrant.

By section 20 of the immigration act provision is made for the release "under bond in the penalty of not less than five hundred dollars with security approved by the Secretary of Commerce and Labor," of aliens proceeded against for deportation, the bond to be conditioned for the production of the alien for hearing when required and for deportation if found to be unlawfully in the United States. In practice the amount of the bond is usually fixed at $500, and the bond must be approved, by either the Department or the local United States attorney, before the alien is released thereunder.[38] It is also required, in this connection, that no alien unable to give bail shall be held in jail if any other secure place of detention is available.[39]

2. In connection with a writ of habeas corpus.

It is customary for the courts, in the exercise of their inherent discretion to release on bail in connection with *habeas corpus* proceedings, aliens arrested within the country and held by the immigration officials for deportation, on whose behalf a writ has been sued out to test the legality of the administrative order. There being no prohibition, or even regulation, of this practice in the statute, it is left to the discretion of the court in each instance, to be exercised favorably or unfavorably as circumstances are deemed to require.

3. For use as witnesses.

There is no specific provision in the law for holding

[38]Rule 22, sub. 5, Immigration Rules.

[39]*Ibid.*

arrested aliens for use as witnesses, although there is such a provision regarding aliens rejected when endeavoring to enter.[41] The detention of such aliens for use as witnesses is, therefore, governed by the practice which obtains generally in courts of law; where it is necessary to have witnesses bound over to appear and testify or to take their depositions *de bene esse* in suits arising under the alien contract labor provisions of the immigration law it is permissible to take depositions;[42] so that, where an alien witness is about to be removed from the country his testimony may be preserved by the *de bene esse* process.

(b.) Under the Chinese Exclusion Laws.

1. In general.

By section 2 of the Act of November 3, 1893, it is provided that the order of deportation issued in the case of a Chinese person arrested and brought to trial before a United States commissioner or court shall be executed by the United States marshal of the district within which such order was made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal and shall not be admitted to bail.

Therefore, the right to bail of a Chinese person arrested for deportation is determinable, not by the rule applicable to ordinary cases under the writ of *habeas corpus,* but by these specific provisions of law.[43]

2. Pending hearing before United States commissioner.

It has been held that the Act of 1893 is not intended to prevent the release under bail of an arrested Chinese

[41]See section 19 of the Immigration Act, rule 25, of the Immigration Regulations, and Bureau of Immigration and Naturalization Circular No. 29.

[42]Moller v. United States, 57 Fed. 490; Hepner v. United States, 213 U. S. 103, 53 Law Ed. 720.

[43]*In re* Jem Yuen, 188 Fed. 350; *In re* Chin Wah, 182 Fed. 256; Chan Gun v. United States, 9 Appeals D. C. 290.

pending the hearing of his case before a United States commissioner,[44] and it is customary in some districts to permit release, particularly where it is apparent that the ends of justice demand that the hearing and determination of the case shall not be hurried. Along the land boundaries, however, where many cases arise in which the Chinese patently have been smuggled in, bail is often refused or placed at so high an amount as to practically prohibit its being furnished or to insure its nonforfeiture if furnished.

3. Pending decision on appeal.

Pending appeal upon the decision by a commissioner or a court, an arrested Chinese person may be released under bail, his release under such circumstances being a matter inherently within the discretion of the court.[45] But where it appears from the record that the defendant entered and remained in the United States in plain defiance of law bail will be refused;[46] also where the court has affirmed the commissioner's order on appeal, and the only further step to be taken is actual deportation in pursuance of the decision.[47] In the Ah How case the Supreme Court was asked to express an opinion as to the right of the appellants to give bail pending their appeal but declined to do

[44] *In re* Lum Poy *et al.*, 128 Fed. 974.

[45] Chin Wah v. Colwell, 187 Fed. 592; *In re* Chin Wah, 182 Fed. 256; *In re* Ah Tai, 125 Fed. 795; and under Act 702 of the Philippines Commission in the case of a Chinese person who has appealed to the Supreme Court of the Philippines from a judgment of a court of first instance ordering his deportation. United States v. Go Siaco, 12 Phil. Rep. 490. Bail may be allowed where Chinese persons are arrested on the ground of being unlawfully here and after an affirmance of the commissioners's order of deportation by a district court, and pending an appeal taken to the Circuit Court of Appeals. Although granting bail under these conditions is not specifically authorized by law it does not violate public policy or the provisions of the Act of November 3, 1893, since the prohibition therein contained against the granting of bail is applicable only to cases where a final order of deportation has been issued. United States v. Yee Yet, United States v. Yee Kee Guey, 192 Fed. 577.

[46] United States v. Fat Chung, 132 Fed. 109.

[47] *In re* Chin Wah, 182 Fed. 256.

so, the point having become a moot one; however, the argument of the Solicitor General in that case is of interest and value.[48]

4. For use as witnesses.

What has already been said[49] regarding the holding, or release under bond, of alien witnesses, with respect to whom there is no specific statutory authority for such action, applies with equal force to Chinese arrested within the country and those rejected at the ports and aliens of other races arrested in deportation proceedings.

V. Place to Which Deported.

1. *Under the Immigration Law.*

(a.) Of Aliens Refused Admission.

1. At seaports.

While it is provided by section 19 of the immigration act "that all aliens brought to this country in violation of law shall, if practicable, be immediately sent back to the *country* whence they came on the vessels bringing them," the same section penalizes the failure or refusal of such a vessel to return rejected aliens "to the foreign *port* from which they came." In practice, therefore, it is conceded that all the United States authorities can compel the vessel to do is to return the alien to the port at which he was taken on board; but, as a matter of fact, at least so far as European and West Asiatic aliens are concerned, the result usually is that the alien is taken back to his home or place of origin, for generally transportation companies are not permitted by the laws and regulations of the countries in which the large sea ports of embarkation are located to leave the alien at such a port, and unless the company arranges for his prompt migration to some other transoceanic country, it must

[48] Ah How v. United States, 193 U. S. 65, 48 Law Ed. 619.
[49] *Ante*, p. 664.

make arrangements to remove him from the country in which he has merely sojourned as an incident to his attempted migration to the United States. The right of the Government to enforce the return to the foreign port of embarkation at the expense of the vessel bringing the alien is discussed in a very recent decision of the Supreme Court,[50] wherein it was held that the taking in Bremen of a sum sufficient to pay return fare of an alien whose admissibility was questionable and the retention of such amount after the arrival of the alien at New York constituted an offense punishable under section 19.

Aliens applying to enter the United States at Canadian seaports are treated exactly as those applying at United States seaports; this being possible under the agreement between Canadian transportation companies and the Commissioner General, embodied in rule 12 of the immigration rules.

2. At land border ports.

Aliens applying for entry at land border ports fall into two classes: (a) Those who are citizens or *bona fide* residents of Canada or Mexico; and (b) those who are really coming from some trans-oceanic country and have entered Canada or Mexico merely as an incident to their attempt to enter the United States.

With respect to the first class, whether they come from Canada or Mexico, if they are rejected at the border port, all the United States immigration officials can do is to turn them back into that country, except that under the agreement between Canadian railway lines and the Commissioner General, aliens of said class brought by such a railway to a border point and then rejected by a board of special inquiry, "shall be returned a reasonable distance in Canada from the boundary by the transportation company which brought them thereto."[51]

With respect to the second class, the same thing is true,

[50]United States v. Nord Deutscher Lloyd, 223 U. S. 512, 56 Law Ed. ——.
[51]Par. c., subd. 7, rule 12, Immigration Rules.

except that under the agreement mentioned, the Canadian steamship companies parties thereto may be required "whenever in the judgment of the Secretary of Commerce and Labor the deportation of such aliens in the manner described is deemed necessary to safeguard the interests of the United States," to return to the transoceanic country of embarkation, any member of said class who is rejected for statutory reasons at any Canadian border port.[52]

(b.) Of Aliens Arrested within the Country.

Section 20 of the immigration act provides for the deportation within three years after entry of aliens who enter in violation of law or become public charges, to the country whence they came. Section 21, regarding the deportation of aliens deportable "under any law of the United States" also contains the expression "country whence they came." But section 35 is to the effect that aliens arrested within the country and ordered deported shall be returned to "the transatlantic or transpacific ports from which said aliens embarked for the United States; or, if such embarkation was for foreign contiguous territory, to the foreign port at which said aliens embarked for such territory."

Section 3 of the Act of 1907, as amended by section 2 of the Act of 1910, provides for the deportation of certain classes of immoral aliens named therein "in the manner provided" by sections 20 and 21; and also that any alien convicted thereunder of a violation of the criminal provisions of said section, shall, "at the expiration of this sentence, be taken into custody and returned to the country whence he came, or of which he is a subject or citizen, in the manner provided in sections 20 and 21."

It has been held that sections 20, 21 and 35 must be construed together in determining the country to which an arrested alien shall be deported;[53] and doubtless the

[52]Par. b., subd. 7, rule 12, Immigration Rules.

[53]*Ex parte* Hamaguchi, 161 Fed. 185.

above-quoted provision of section 3 as amended gives further ground for so holding. A circuit court of appeals has recently expressed the opinion that sections 20 and 21 and section 3 ought to be construed together,[54] holding broadly and unequivocally that the words of the statute "returned to the country whence he came" must, in the light of the history and obvious purpose of sections 20 and 21, be held to mean the place of nativity or citizenship, especially as it may readily be conceived that it is no uncommon occurrence for an alien to come immediately from some country in which he does not belong and to which it could hardly be the intent of Congress that he should be returned; and intimating that, in its judgment, the words "of which he is a subject or citizen," in section 3 as amended, being the latest word of Congress on the subject, might properly be regarded as applying to each and every section of the act. But the court did not find it absolutely necessary to rely upon this expression in order to reach the conclusion above stated, and it is to be noted that the court did not consider, or at least did not discuss, the provisions of section 35 of the act, requiring that the deportation of arrested aliens shall be to the transatlantic or transpacific ports at which they embarked for the United States, or if they embarked for foreign contiguous territory, to the foreign port at which they embarked for such territory—which section might, perhaps, be regarded as partly limiting the Secretary's discretion as to the place to which an arrested alien shall be sent. However, it would seem that section 35 really has to do with the port to which an arrested alien shall be sent when getting him out of this country and back to, or at least toward, the country of his origin. As a matter of fact, this section was adopted by Congress to enable the Commissioner General to enter into effective contracts, under the provisions of sections 22 and 32, whereby the control of immi-

[54] Frick v. Lewis, 195 Fed. 693.

gration from and through Canada and Mexico might be made thoroughly effective, by having transportation companies carrying alien passengers to those countries destined to the United States agree to return them to the foreign port of embarkation at their expense in case they were subsequently found to be in the United States in violation of law. Such a provision is contained in the existing agreements with Canadian transportation companies.[55]

It was held in a much earlier case, which arose under the act of 1891, that temporary residence in British Columbia had no effect on the place to which certain aliens of French extraction should be deported, where it was shown that they had come directly to this country from France, had entered unlawfully, and during the period of one year within which, under the act mentioned, aliens found to be unlawfully here were subject to deportation, had left temporarily for a visit to British Columbia and returned therefrom to the United States; but that France was the proper place to which to deport them.[56]

Although doubtless the proper country to which to deport an arrested alien is that of his allegiance, which in most cases would be that of which he is a subject or citizen, it can readily be understood that cases may arise with some frequency in which the existence of a temporary allegiance, entered into and subject to maintenance with the consent of a sovereign other than the country of origin, would justify deportation to such country rather than to the state to which the alien owes national allegiance.

Under section 36 of the immigration act aliens who enter the United States at places other than those designated as ports of entry by the Secretary of Commerce and Labor are subject to deportation as being unlawfully in the country. This provision applies to Chinese as well as

[55]Par. d., subd. 7, rule 12, Immigration Rules.
[56]Lavin v. Le Fevre, 125 Fed. 693.

all other aliens.[57] When section 36 is construed in connection with sections 20, 21, and 35 the deportation destination of such persons, when found unlawfully in the United States, naturally is their country of origin; the word "ports" in section 35, as already seen, indicating the particular place to which they shall be conveyed when getting them back to such country. But the question of what to do with Chinese aliens arrested while attempting to enter across the Canadian border at first presented some difficulty when their arrest was accomplished by immigration officials.

It seems strange, in view of the fact that the Attorney General held as early as June, 1903, that the immigration Act of 1903 applied to Chinese as well as to all other aliens,[58] that the administrative officers were, as shown by the reported cases, so slow to realize that the immigration law afforded an easy and summary means of ridding the country of Chinese who entered surreptitiously, and returning them to the country of their origin, usually China. The first effort in that direction seems to have been the Chow Chock case,[59] in which a number of Chinese aliens who attempted to cross the border of northern New York in April, 1908, were taken into custody in the act of crossing and conveyed to Malone, the nearest port of entry, where they were given the administrative examination accorded Chinese applicants for admission and were rejected. This action was sustained by the district court, Northern District of New York, and also by the Circuit Court of Appeals, Second Circuit.[60] Then the officers attempted to return the Chinese to China, knowing that Canada would not allow their return there unless a head tax of $500 were paid for each; but while they were being

[57] *Ex parte* Wong You *et al.*, 176 Fed. 933; United States v. Wong You *et al.*, 223 U. S. 67, 56 Law Ed. ——.

[58] 24 Op. Atty. Gen. 706.

[59] 161 Fed. 627.

[60] *Ibid.*, and 163 Fed. 1021.

conveyed to San Francisco for transportation to China, a writ of *habeas corpus* was sued out in the Third Circuit, which was dismissed by the district court, but allowed by the Circuit Court of Appeals,[61] the court holding that Chinese examined and rejected at a land-border port of entry can, under the Chinese exclusion law, merely be turned back into the country from which at the time they are seeking admission, and cannot be taken into custody and conveyed to some other country across seas. Failing to obtain the court's approval of this attempted method, the immigration officials next attempted to apply to Chinese surreptitiously entering, the provisions of the immigration law, which gave rise to the test case of Wong You *et al.,* being a party of Chinese arrested on departmental warrants in northern New York in 1909. This method was approved by the district court,[62] in a decision exhaustive of the subject, holding that the fact that an alien happens to be of the Chinese race in no sense excuses him from compliance with the general law regarding the entry of aliens, and that if such an alien enters the country in violation of both the immigration and the exclusion laws, the Government may elect under which law it will proceed for his deportation. The Circuit Court of Appeals, Second Circuit, reversed this decision,[63] invoking the ancient rule *generalia specialibus non derogant,* and holding that, as Wong You and his companions were shown by the record to be Chinese laborers, and as the special statute (the exclusion laws), provide a method of excluding and expelling laborers (overlooking the fact that the provisions of the law applicable to the case relate to all Chinese persons except officials), the general law, although simultaneously violated, could not be used to effect the removal of the Chinese to the country of origin.

[61] Lui Lum v. United States, 166 Fed. 106.

[62] *Ex parte* Wong You *et al.*, 176 Fed. 933; see also *Ex parte* Li Dick, 174 Fed. 674, and 176 Fed. 998.

[63] Wong You v. United States, 181 Fed. 313.

This latter decision has, however, been reversed by the Supreme Court,[64] the opinion being expressed that "the Circuit Court of Appeals made a mistaken use of its privileges of interpretation;" that by the language of the immediate act "any alien that enters the country unlawfully may be summarily deported by order of the Secretary of Commerce and Labor," and "that language undoubtedly applies to Chinese as well as all other aliens," and, in fact, as the law "requires deportation to the *transpacific ports from which* such aliens embarked for the United States, section 35, it is rather hard to say that it has not the Chinese specially in mind."

Pending the outcome of the Wong You case, however, administrative officers sought to obtain another solution of the dilemma with regard to what disposition to make of Chinese found entering surreptitiously. In the case of Yuen Pak Sune *et al.*,[65] the facts showed that Chinese persons not of the exempt classes were apprehended by the immigration authorities in an attempt to enter the United States from Canada. They were taken to the nearest port of entry for Chinese, and there, after an administrative examination, rejected and ordered returned to Canada. When the attempt was made to return them to Canada as the country whence they came, it developed that they were unable to pay the head tax of five hundred dollars required by the Canadian law. The immigration authorities then released the Chinese and immediately rearrested them as being unlawfully in the country under the Chinese exclusion acts. The district court, to which application was made for warrants ordering their deportation to China, held that the inability of the immigration officers to return the petitioners to Canada because of their lack of funds to meet the head tax required was not a bar to arrest and deportation under the Chinese exclu-

[64] United States v. Wong You, Wong Cheen *et al.*, 223 U. S. 67, 56 Law Ed. ——.

[65] 183 Fed. 260.

sion acts; that although apprehended in the act of entry they were physically within the United States, and having as a result of their attempt to deliberately violate the laws of this country placed themselves in this position, they could not be heard to claim that, for the purposes of deportation as provided by these laws, they had established no foothold here. This decision was approved by the Circuit Court of Appeals for the Second Circuit.[66]

In view of the decision last discussed and of the decision of the Supreme Court in the Wong You case, it may be said to be definitely settled that any Chinese alien who enters the country surreptitiously, and, therefore, in violation of both the immigration and Chinese exclusion laws, may be deported to the country whence he came, by any one of three procedures, viz: (1) by arresting him on a warrant secured from a judge or commissioner of a United States court, before which he will be tried, and, if found to be unlawfully in the country, will be ordered to be deported to China, unless he shows that he is a citizen of some other country, and even then if that other country refuses to allow his return without the payment of a head tax;[67] (2) by taking such Chinese first before the immigration officers at a port of entry for Chinese and treating him as an applicant for admission, and then, if he is rejected and the country from which he sought admission to enter refuses to take him back, he may be taken before a district court or a commissioner thereof, and application made for an order for his deportation to the country from which he came to that from which he was seeking admission; (3) by applying to the Secretary of Commerce and Labor for an administrative warrant of arrest, and proceeding in accordance with the terms of rule 22 of the immigration rules for his deportation to the transpacific (or transoceanic) country whence he came.

[66]191 Fed. 825.

[67]Section 2, Act of 1892.

(c.) Power of courts to interfere if wrong country selected.

There is some conflict of decision regarding the authority of the courts to release an alien under the writ of *habeas corpus* where it is made to appear to the court that the immigration officials are about to deport the alien to a country other than that from which he actually came when he entered the United States.[68] In the Ruiz case the alien had come originally from Spain, but the court found from the record that his entry to the United States had been accomplished from Panama; that the Secretary's warrant directing his return to Spain was illegal; and that without regard to the question of his lawful right to remain in the United States, the court must release him, as to dismiss the writ and remand him to custody would mean his deportation elsewhere than to the country whence he came. In the Ueberall case the court held that the alien was not entitled to release on the ground that the warrant showed that the Secretary of Commerce and Labor intended to deport him to the wrong country, since *habeas corpus* can be used to release an alien only after it has been ascertained that he is entitled to remain. The record showed that Ueberall was subject to deportation, as was also true of Ruiz. Ueberall's last entry had been from Canada, and he was deported to Europe. In Lewis v. Frick,[69] Lewis, a native and subject of Russia, had entered the United States at the port of New York in 1904, and lived here continuously until 1911, when he crossed the boundary into Canada at Detroit, and after remaining in Canada about one hour reentered the United States. He was arrested charged with entering in violation of law, and was ordered deported to Russia. He was released by the district court on the ground, among others, that the Secretary was about to

[68]United States *ex rel.* Ruiz v. Redfern, 186 Fed. 603; United States *ex rel.* Ueberall v. Williams, 187 Fed. 470.

[69]189 Fed. 146.

cause his removal to a country other than the one "whence he came." This decision was reversed by the Circuit Court of Appeals,[70] the Ueberall case being cited with apparent approval and the Ruiz case with apparent disapproval. The weight of judicial opinion, therefore, appears to be that the execution of an administrative warrant of deportation cannot be interfered with by the courts on the mere allegation, or even proof, that the alien involved is about to be transported thereunder to a country other than that "whence he came."

2. *Under the Chinese Exclusion Laws.*

(a.) Of Chinese Refused Admission.

1. At Seaports.

By section 12 of the Act of 1882, as amended by the Act of 1884, it is provided that "the United States shall pay all costs and charges for the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act." Section 9 of said act requires that no Chinese shall be permitted to leave a vessel in a port of this country in violation of law or until examined and passed by the inspectors. These and the various provisions of the exclusion acts denying or regulating the right of entry are and always have been construed by administrative officials to require that rejected Chinese shall be left in or returned to the custody of the vessel by which brought (according to whether examined in the vessel or in an immigrant station), and as placing upon the vessel's owners and officers the duty of taking the Chinese back to the place whence they came, although the law does not specifically so provide. Nor has it ever been customary for the Government to bear any of the

[70]Frick v. Lewis, 195 Fed. 693.

expense of the return of any class of Chinese, notwithstanding the above-quoted provision on that subject, it not being the practice of Congress to make any provision for that purpose in its annual appropriations for the enforcement of the Chinese exclusion laws.[71]

2. At Land Border Ports.

Chinese persons and persons of Chinese descent may enter the United States only at ports declared by statute or rule to be ports of entry for aliens of that race.[72] There is no port of entry for Chinese on the Mexican border. Formerly there were several such ports of an unlimited character on the Canadian border; but the entry of Chinese from and through Canada is now governed by an agreement with the Canadian Pacific Railway Company, whereby all Chinese coming from the Orient through Canada are examined at Vancouver, British Columbia, and if found admissible are allowed to proceed to certain specified border ports for entry under the certificate of identification, and if rejected are at once returned to China by the vessel bringing them to Vancouver. These border ports are also open to Chinese who seek admission to the United States from Canada, provided they hold certificates of identity issued by specified United States immigration officials stationed in Canada.[73] Such Chinese, if refused admission by the last-named officials are, of course, left where found, i. e., in Canada.

The courts have regarded the land border ports of entry as located "at the limits of the jurisdiction" of the United States, just as they have the seaports of entry,[75] although some of such ports are really well within the territorial bounds of this country.[74]

[71]Rule 6, Chinese Regulations, Append.

[72]Section 7, Act of September 13, 1888; Rule 1, Chinese Regulations, Append.

[73]Rule 1, Chinese Regulations, Append.

[74]United States v. Sing Tuck *et al.*, 194 U. S. 161, 48 Law Ed. 917.

[75]United States v. Ju Toy, 198 U. S. 253, 49 Law Ed. 1040.

An interesting question which has occasionally been raised but, it seems, never discussed by the courts, is whether a Chinese who claims to be an American citizen by birth may properly be refused examination at a port not designated as a port of entry for Chinese by law or regulation. It has been held (quite properly, it would seem) by administrative officers that if the Chinese has in his possession documentary evidence of a conclusive nature to show that he was born in the United States, such as a certified copy of a decision of a court with his photograph attached under seal, so that no question of fact regarding the applicant remains to be adjudicated, he may enter at any port or place; but that, if any question of fact must be adjudicated in connection with his application, he must proceed to a port of entry for aliens of his race where are stationed officers having the legal right to render a decision on such a question.

It has been held by the Canadian courts that Chinese who are inadmissible to the United States may be deported to China by the railway and steamship line involved, and that the alien cannot be released in Canada under a writ of *habeas corpus*.[76]

(b.) Of Chinese arrested within the Country.

Section 12 of the Act of May 6, 1882, and section 13 of the Act of September 13, 1888, provide that any Chinese person found to be unlawfully in the United States shall be removed from the United States to the country whence he came. Section 2 of the Act of May 5, 1892, provides that such a person shall be removed from the United States to China, unless he shall make it appear to the justice, judge, or commissioner before whom he is tried that he is a subject of some other country; with the further provision that, if the other country of which the Chinese person claims to be a citizen or subject demands any tax

[76]Wing Toy *et al.* v. Can. Pac. Ry. Co., 13 Quebec Of. Law Rep. 172, King's Bench.

as a condition of the removal of such person to that country, he shall be removed to China. The burden was thus placed on the Chinese person so arrested and found to be unlawfully in this country to show that he is entitled to be deported elsewhere than to China.[77]

Where certain Chinese persons embarked at Hongkong and eventually came to this country, after remaining for varying periods of time in Canada, Hongkong, and not Canada, was held to be the country whence they came, it being shown that at the time of departure from Hongkong they intended to come to the United States;[78] and where it appeared that a Chinese laborer found to be unlawfully in the United States had entered from British Columbia and that he had a valid right under the laws of that country to return, British Columbia was, under the exclusion laws, the "country whence he came;" the opinion of the court being that said phrase as used in the Act of October 1, 1888, did not necessarily refer to China.[79] The fact that a Chinese ordered deported had in his possession a return certificate issued by the Government of Canada, together with the absence of any facts indicating that he had left China to come to this country, was considered sufficient to prove the right to return under the Canadian law;[80] and it was held in a later case that the possession by a Chinaman of a return ticket issued by Canadian authorities, taken in connection with the established facts that he had carried on a laundry in a Canadian town for months and had been in the same province for a considerable time, was sufficient to show that he had acquired a *bona fide* domicile there.[81] But where the facts showed that a Chinese person who had entered the country unlawfully could not be returned to British Columbia except by

[77]United States v. Sing Lee, 125 Fed. 627; see also United States v. Lee Kee, 116 Fed. 612; 20 Op. Atty. Gen. 171.

[78]*Ex parte* Wong You *et al.*, 176 Fed. 933.

[79]*In re* Lee Hom Bow, 47 Fed. 302; United States v. Jim, 47 Fed. 431.

[80]United States v. Jim, 47 Fed. 431.

[81]United States v. Chong Sam. 47 Fed. 878.

paying a head tax, China was held to be the country whence he came;[82] with all the more reason because it was shown that the alien's presence in Canada was no more than incidental to a clandestine journey to this country from China by way of British Columbia.

In a still later case where the deportation proceedings were brought under the Act of May 5, 1892, it was held that where it appeared that the parties arrested for being unlawfully here were not citizens or subjects of British Columbia—the entry having been made across the Canadian border—they should be deported to China.[83] Unintentional entry by a Chinese person into this country from contiguous territory has been held, however, not to afford reason for a literal application of the provision. Thus, where a Chinaman's entry across the Mexican border was shown to have been unaccompanied by the intention to violate the exclusion acts it seems that the court would have discretion to permit his return to Mexico.[84] In connection with this subject see what has been said regarding the deportation of Chinese arrested under the immigration law after surreptitious entry.[85]

[82]United States v. Ah Toy, 47 Fed. 305.
[83]United States v. Lee Kee *et al.*, 116 Fed. 612.
[84]Yee Yee Chung v. United States, 95 Fed. 432.
[85]p. 672, *infra.*

APPENDIX

APPENDIX A

SOME FOREIGN LAWS REGARDING THE EXCLUSION AND EXPULSION OF ALIENS

ARGENTINE REPUBLIC.

(Summary)

To a Department of Immigration with its adjuncts is committed the administration of immigration laws. The chief duties prescribed are to promote publicity of natural resources; induce desirable immigration; prohibit vicious immigration; protect the rights and interests of immigrants; contract for passage at public expense; regulate vessels transporting immigrants; and organize an efficient system to settle and develop unoccupied lands.

Special agents are stationed in the populous countries of Europe and America to represent the government. They supervise the selection and restriction of immigrants.

Immigration commissions are established in the ports of entry of the Republic to direct the admission and location of immigrants.

A labor bureau is conducted to provide work for the unemployed.

Immigrants.

The term "immigrant," includes every foreign laborer, mechanic, artisan, farmer or other worker of aptitude and morality under 60 years of age, arriving in the Republic by sea with the intention to remain, having paid his own passage of the second or third class, or whose expenses are paid from private or public funds.

Immigrants of approved character, conduct and efficiency may be maintained at the expense of the state for five days after arrival; during grave illness; or until sent to their destination when enlisted by the state for the colonies. They may select the

most suitable occupation; be transferred at state expense to their destination; and be furnished certain equipment and supplies. Certificates of character and conduct issued by officials of the immigrant's country or by representatives of the Republic will be accepted as evidence of approval.

Passports.

Persons defined by law as immigrants who are traveling with second or third class passage on sailing vessels or steamships should possess certificates of identity, nationality, occupation, and civil status from some official of the cuntry of their allegiance or a consul of the Republic.

Prohibitions.

Captains of vessels carrying immigrants are prohibited from accepting passengers intending to embark for Argentina from any place where Asiatic cholera, yellow fever or any other epidemic prevails. They are also prohibited from transporting to the state any person afflicted with a contagious disease; any person suffering from an organic defect that would incapacitate for labor; any person over 60 years old unless the head of a family; any insane person, beggar, convict or criminal under prosecution. The vessels are subject to a penalty of reconveying each person to the port of embarkation without pay in addition to a fine.

Law of Residence of November 22, 1902.

In Article 1 it is provided that the executive shall have the power to order the expulsion from the territory of the Nation any immigrant who shall have been convicted or who is sought by a foreign tribunal on the ground of having committed a criminal offence.

Article 2 provides that any person who by his acts shall compromise the national safety or public order is likewise subject to expulsion from the State.

Article 3 authorizes the administrative authorities to prohibit the entrance into the Republic of every foreigner whose personal record is such as to give reasonable cause to believe that he comes within the prohibitions of the preceding articles.

Article 4 provides that a foreigner against whom an order of expulsion has issued shall have a period of three days within which to leave the Argentine Republic and empowers the executive to order his detention until the moment of his departure should the public safety require it.

AUSTRALIA.

No. 17 *of* 1901.

An act to place certain restrictions on Immigration and to provide for the removal from the Commonwealth of prohibited Immigrants. (Assented to 23rd December, 1901.)

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia as follows:

1. This Act may be cited as the Immigration Restriction Act of 1901.

2. In this Act, unless the contrary intention appears, "Officer" means any officer appointed under this Act, or any Officer of Customs; the "Minister" means the Minister for External Affairs.

3. The immigration into the Commonwealth of the persons described in any of the following paragraphs of this section (hereinafter called "prohibited immigrants") is prohibited, namely:

(a) Any person who when asked to do so by an officer fails to write out at dictation and sign in the presence of the officer a passage of fifty words in length in an European language directed by the officer;

(b) Any person likely in the opinion of the Minister or of an officer to become a charge upon the public or upon any public or charitable institution;

(c) An idiot or insane person;

(d) Any person suffering from an infectious or contagious disease of a loathsome or dangerous character;

(e) Any person who has within three years been convicted of an offence, not being a political offence, and has been sentenced to imprisonment for one year or longer therefor, and has not received a pardon;

(f) Any prostitute or person living on the prostitution of others;

(g) Any person under a contract or agreement to perform manual labor within the Commonwealth: Provided that this paragraph shall not apply to workmen exempted by the Minister for special skill required in Australia or to persons under contract or agreement to serve as part of the crew of a vessel engaged in the coasting trade in Australian waters if the rates of wages specified therein are not lower than the rates ruling in the Commonwealth.

But the following are excepted:

(h) Any person possessed of a certificate of exemption in force for the time being in the form in the Schedule, signed by the Minister or by any officer appointed under this Act whether within or without the Commonwealth;

(i) Members of the King's regular land or sea forces;

(j) The master and crew of any public vessel of any Government;

(k) The master and crew of any other vessel landing during the stay of the vessel in any port in the Commonwealth; Provided that the master shall upon being so required by any officer, and before being permitted to clear out from or leave the port, muster the crew in the presence of an officer; and if it is found that any person, who according to the vessel's articles was one of the crew when she arrived at the port, and who would in the opinion of the officer be a prohibited immigrant but for the exception contained in this paragraph, is not present, then such person shall not be excepted by this paragraph, and until the contrary is shown, shall be deemed to be a prohibited immigrant and to have entered the Commonwealth contrary to this Act;

(l) Any person duly accredited to the Government of the Commonwealth by the Imperial or any other Government or sent by any Government on any special mission;

(m) A wife accompanying her husband if he is not a prohibited immigrant, and all children apparently under the age of eighteen years accompanying their father or mother, if the father or mother is not a prohibited immigrant; but so that the exceptions in this paragraph shall not apply if suspended by procla-

mation; and such suspension may be of general application or limited to any cases or class of cases;

(n) Any person who satisfies an officer that he has formerly been domiciled in the Commonwealth or in any colony which has become a State.

4. A certificate of exemption shall be expressed to be in force for a specified period only, and may at any time be cancelled by the Minister by writing under his hand.

Upon the expiration or cancellation of any such certificate, the person named therein may, if found within the Commonwealth, be treated as a prohibited immigrant offending against this Act:

Provided that in the case of a person entering the Commonwealth from any vessel under this section no penalty shall attach to the vessel or its master, owners or charterers.

5. (1) Any immigrant who evades an officer or who enters the Commonwealth at any place where no officer is stationed may, if at any time thereafter he is found within the Commonwealth, be asked to comply with the requirements of paragraph (a) of section three, and shall if he fail to do so be deemed to be a prohibited immigrant offending against this Act.

(2) Any immigrant may at any time within one year after he has entered the Commonwealth be asked to comply with the requirements of paragraph (a) of section three, and shall if he fail to do so be deemed to be a prohibited immigrant offending against this Act.

6. Any prohibited immigrant within the meaning of paragraph (a) only of section three, may, if thought fit by an officer, be allowed to enter the Commonwealth, or to remain within the Commonwealth upon the following conditions:

(a) He shall on entering the Commonwealth, or on failing to comply with the requirements of that paragraph, deposit with an officer the sum of One hundred pounds.

(b) He shall within thirty days after depositing such sum obtain from the Minister a certificate of exemption in the form of the Schedule, or depart from the Commonwealth, and thereupon the deposit shall be returned; but otherwise the deposit or any part thereof may be forfeited and he may be treated as a prohibited immigrant offending against this Act.

Provided that in the case of a person entering the Common-

wealth from any vessel under this section no penalty shall attach to the vessel or its master, owners or charterers.

7. Every prohibited immigrant entering or found within the Commonwealth in contravention or evasion of this Act shall be guilty of an offence against this Act, and shall be liable upon summary conviction to imprisonment for not more than six months, and in addition to or substitution for such imprisonment shall be liable pursuant to any order of the Minister to be deported from the Commonwealth.

Provided that the imprisonment shall cease for the purpose of deportation, or if the offender finds two approved sureties each in the sum of Fifty pounds for his leaving the Commonwealth within one month.

8. Any person who is not a British subject either natural-born or naturalized under a law of the United Kingdom or of the Commonwealth or of a State, and who is convicted of any crime of violence against the person, shall be liable, upon the expiration of any term of imprisonment imposed on him therefor, to be required to write out at dictation and sign in the presence of an officer a passage of fifty words in length in an European language directed by the officer, and if he fails to do so shall be deeemed to be a prohibited immigrant and shall be deported from the Commonwealth pursuant to any order of the Minister.

9. The master, owners and charterers of any vessel from which any prohibited immigrant enters the Commonwealth contrary to this Act shall be jointly and severally liable to a penalty not exceeding One hundred pounds for each immigrant so entering the Commonwealth.

Provided that in the case of an immigrant of European race or descent no penalty shall be imposed under this section on any master, owner or charterer who proves to the satisfaction of the Court that he had no knowledge of the immigrant being landed contrary to this Act, and that he took all possible precautions to prevent it.

10. (1) The Minister, or any Collector of Customs specially empowered by him, may by writing under his hand authorize any officer to detain any vessel from which any prohibited immigrant has, in the opinion of the officer, entered the Commonwealth contrary to this Act; and the vessel may then be detained at the place where she is found, or at any place to which the

Minister or Collector may order her to be brought. The Minister or such Collector shall forthwith give notice to the owner or agent of the vessel of the detention of such vessel.

(2) For the purposes of the detention and other lawful dealing with the vessel the officer so authorized shall be entitled to obtain such writ of assistance or other aid as is provided under any law relating to the Customs with respect to the seizure of vessels or goods.

(3) The detention shall be for safe custody only, and shall cease if a bond with two sufficient sureties to the satisfaction of the Minister or the collector be given by the master, owners or charterers of the vessel for the payment of any penalty which may be adjudged under this Act to be paid for the offence or default.

(4) If default is made in payment of any such penalty, the officer may seize the vessel; and the like proceedings shall thereupon be taken for forfeiting and condemning the vessel as in the case of a vessel seized for breach of any law relating to the Customs, and the vessel shall be sold.

(5) The proceeds of the sale shall be applied first in payment of the penalty and of all costs incurred in and about the sale and the proceedings leading thereto, and the balance shall be paid to the owners of or other persons lawfully entitled to the vessel before condemnation and sale.

11. No contract or agreement made with persons without the Commonwealth for such persons to perform manual labor within the Commonwealth whereby such persons become prohibited immigrants within the meaning of paragraph (g) of section three shall be enforceable or have any effect.

12. (1) Any person who in any way wilfully assists any other person to contravene or attempt to contravene any of the provisions of this Act, or makes or authorizes any contract or agreement the performance of which would be a contravention of this Act, shall be guilty of an offence against this Act.

(2) Any person who makes or authorizes such contract or agreement shall be liable to the Commonwealth for any expense incurred by the Commonwealth in respect of any immigrant prohibited by reason of the contract or agreement.

13. Any person who is unlawfully instrumental in bringing or attempting to bring into the Commonwealth any idiot or insane

person, contrary to this Act, shall, in addition to any other penalty, be liable to the Commonwealth for any expense in respect of the maintenance of the idiot or insane person whilst within the Commonwealth.

14. Every member of the police force of any State, and every officer, may with any necessary assistance prevent any prohibited immigrant, or person reasonably supposed to be a prohibited immigrant, from entering the Commonwealth, and may take all legal proceedings necessary for the enforcement of this Act.

15. Subject to any Act relating to the public service, the Governor-General may appoint officers for carrying out this Act, and may prescribe their duties.

16. (1) The Governor-General may make regulations for carrying out this Act and for empowering officers to determine whether any person is a prohibited immigrant.

(2) All such regulations shall be notified in the Gazette, and shall thereupon have the force of law.

(3) All such regulations shall be laid before both Houses of the Parliament within thirty days after the making thereof if the Parliament be then sitting, and if not then within thirty days after the next meeting of the Parliament.

17. The Minister shall cause to be made annually a return which shall be laid before Parliament, showing the number of persons refused admission into the Commonwealth on the ground of being prohibited immigrants, the nations to which they belong and whence they came, and the grounds on which admission was refused; the number of persons who passed the test prescribed by paragraph (a) of section three, the nations to which they belong and whence they came, the number of persons admitted to the Commonwealth without being asked to pass the test, the nations to which they belong and whence they came.

18. Where no higher penalty is expressly imposed, a person guilty of any offence against this Act, or against any regulation made thereunder, shall be liable on summary conviction to a penalty not exceeding Fifty pounds, and in default of payment to imprisonment with or without hard labor for any period not exceeding three months.

19. This Act shall not apply to the immigration of Pacific Island labourers under the provisions of the Pacific Island Labourers Acts, 1880-1892, of the State of Queensland.

BARBADOES.

Summary.

The restrictions imposed upon the admission of immigrants into the Barbadoes are directed against paupers whose presence would be burdensome to the public.

The laws provide that any immigrant, traveling as a second or third class passenger, shall be prohibited from entering when, by reason of physical or mental infirmity, he is unable to maintain himself or is likely to become an object of charity. And any person found traveling as a first class passenger to evade the spirit of the law will be subject to this prohibition. But if a responsible resident of the Colony will give bond to indemnify the government for any expense incurred within five years in behalf of the immigrant, he may be admitted.

BELGIUM.

Law of February 12, 1897.[1]

Article 1. The foreigner residing in Belgium who, by his conduct, shall compromise the public safety, or the foreigner who is a fugitive from justice, or who has been convicted in a foreign country for crimes or felonies for the commission of which he may be extradited, shall be under the obligation, when ordered to do so by the Government, to leave any designated locality, to take up his abode at a given place, or even to leave the Kingdom.

The Royal order commanding a foreigner to leave the Kingdom because he has compromised the public safety shall be the result of action taken by the Council of Ministers.

Article II. The provisions of the preceding article shall not be applicable to the following classes of aliens provided that the nation to which they belong is at peace with Belgium:

(1) An alien domiciled in the Kingdom in accordance with law;

(2) An alien who has married a Belgian woman by whom he has had one or more children born in Belgium during his residence in the country;

[1] Annuaire de Legislation, t. 27, année 1898, p. 514.

(3) The alien who, being married to a Belgian woman, shall have established his residence in Belguim for more than five years and shall have continued to reside there permanently;

(4) A person of foreign parentage born in Belgium and residing therein who has not yet exercised the option prescribed by Article 9 of the Civil Code.[2]

Article III. The Royal order issued under the authority of Article I shall be communicated by the marshall to the foreigner who is the object thereof.

An alien shall be granted a delay of at least one day after receipt thereof.

Article IV. A foreigner who shall have received an order to leave the Kingdom shall be under the obligation of designating the frontier at which he intends to depart; he shall receive an itinerary setting out the route he shall take and the length of his stay at each place through which he must pass in the course of his journey. In case either of these provisions are avoided by him he shall be conducted beyond the limits of the Kingdom by the public authorities.

Article V. The Government shall have the power to order a foreigner, who shall have left the place of residence which has been assigned to him, to leave the country.

Article VI. If an alien who has been ordered to leave the Kingdom shall again come within its territorial limits, he shall be taken into custody and shall be sentenced to an imprisonment of from fifteen days to six months; and at the end of his sentence he shall be conducted to the frontier.

Article VII. Regular reports of the operation and execution of the present law shall be made each year to the Chambers.

Article VIII. Orders of expulsion issued under prior laws shall be given full force and effect.

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BERMUDA.

Summary.

Rigid restrictions are imposed upon immigration by the government of the Bermudas in order to safeguard the general welfare and maintain a high standard of citizenship. Every immigrant seeking admission is required to present a health certificate issued

[2] Same as Article 9 of the French Civil Code.

within ten days of embarkation by a qualified medical officer of his country; to produce a certificate of character attested by a competent officer of his country; and to deposit the sum of ten pounds or give bond for twenty pounds, signed by two responsible sureties to indemnify the government for any expense it may incur in his behalf by reason of delinquency, or disability. The bond stipulates also that he shall leave the Islands if at any time ordered or required. If he leaves within three years the deposit will be refunded.

The Immigration Officer has discretionary power to permit any person to land and remain who will execute a bond for fifty pounds. If the person under bond within three years after arrival becomes an inmate of a public prison, insane asylum, or charitable institution, the government shall be indemnified for all expense involved by taking summary legal action on the bond.

Expulsion.

Any immigrant may be ordered to leave the Islands who, within three years after arrival, is imprisoned for any penal or criminal offense, becomes an inmate of any insane asylum or a charge upon the public; or develops any loathsome, dangerous, infectious, or contagious disease. The government will designate the time and conditions of departure for the place of original embarkation or any other port to which the immigrant may consent to go.

BRAZIL.

Law of January 7, 1907.[1]

Article 1. The foreigner who, for any reason whatsoever, shall compromise the public safety or tranquility may be expelled from the territorial limits of the nation or from any part thereof.

Article 2. The following shall likewise constitute sufficient cause for expulsion: (1) A sentence or a prosecution by foreign courts for the commission of a crime or penalty violative of the common law; (2) at least two convictions by Brazilian tribunals of having committed crimes or felonies in violation of the com-

[1] Revue de droit international privé, 1908 p. 855—Journal du droit international privé, 1907, p. 1217.

mon law; (3) vagabondage, vagrancy, and procuration after due proof thereof.

Article 3. An alien is not subject to expulsion if he has resided within the territory of the republic for two continuous years or even for a lesser period, if besides being such resident he is (a) married to a Brazilian woman, (b) or a widower with a Brazilian child.

Article 4. The executive power may forbid access to the territory of the Republic to any foreigner who, after examination, is found to be one of those mentioned in Articles 1 and 2.

Entrance into the territory cannot be denied a foreigner coming within Article 3 if he has absented himself therefrom for temporary purposes.

Article 5. Expulsion shall be a separate proceeding and shall take the form of an order issued by the minister of justice and internal affairs.

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Article 7. The executive power will, by means of official communication, give notice to the foreigner whom it has decided to expel, of the grounds of its decision, and grant him a period of from three to thirty days during which he shall leave the territory; or, should the public safety demand it, it may order him to be detained up to the moment of his departure.

Article 8. Pending the delay which has been granted, the foreigner may take an appeal to the branch which has ordered his expulsion if the latter is based on the provisions of article 1, or to the federal judicial power if he has been proceeded against under the provisions of Article 2. Only in the latter case shall the appeal operate to suspend his expulsion.

The appeal to the federal judicial power shall be based on the ground that the cause alleged is without foundation; it shall be taken to the judge of the district (juizo seccional). It is understood that the State shall be a party to the proceeding.

Article 9. The foreigner who shall return to the territory whence he has been expelled shall be punished by imprisonment of from one to three years duration after regular proceedings had before the district judge and, on the expiration of the sentence, he shall be again expelled.

Article 10. The executive power may revoke an order of expulsion if the reasons on which it was based shall have ceased to exist.

Article 11. All laws in conflict with the present decree are hereby repealed.

CANADA.

Chinese Immigration Act.

1. The short title of the Act Respecting and Restricting Chinese Immigration as defined is the Chinese Immigration Act.

2. The interpretation clauses stipulated in the Act are as follows:

(a) 'Chief Controller' means the chief Controller of Chinese Immigration who shall have authority over officers of Customs and others appointed for the purpose or charged with the duty of assisting in carrying out the provisions of the Act;

(b) 'Controller' means any Customs or other officer at any seaport or frontier Customs port duly appointed as such and charged with the duty of assisting in carrying the provisions of the Act into effect;

(c) 'master' or 'conductor' means any person in command of or in charge of any vessel or vehicle;

(d) 'Chinese immigrant' means any person of Chinese origin (including any person whose father was of Chinese origin) entering Canada and not entitled to the privilege of exemption provided for by the Act;

(e) 'vessel' means any sea-going craft of any kind or description capable of carrying passengers;

(f) 'tonnage' means the gross tonnage according to the measurement fixed by the Merchant Shipping Acts of the Parliament of the United Kingdom;

(g) 'vehicle' means any ferry boat, boat, railway car, cart, wagon, carriage, sleigh or other conveyance whatsoever, however propelled or drawn.

(h) 'Minister' means the Minister of Trade and Commerce.

3. Any woman of Chinese origin who is the wife of a person who is not of Chinese origin shall for the purpose of the Act be

deemed to be of the same nationality as her husband, and the children of the said wife and husband shall be deemed to be the same nationality as the father.

4. 'Merchant' as used in the Act, shall not include any merchant's clerk, or other employee, mechanic, huckster, pedlar, or person engaged in taking, drying or otherwise preserving fish for home consumption or other exportation.

5. Except as otherwise required by the Quarantine Act, the landing of a person of Chinese origin from a vessel, wherever referred to in the Act, shall not be held to apply to the landing of such person on the wharf and the placing of him in a proper building, where he may remain until the provisions of the Act have been complied with and the controller has given his authority for his departure therefrom, or to the temporary landing of any Chinese sailor for the purpose of assisting in the lading or unlading of the vessel to which he belongs, or for the purpose of his transfer to another vessel, and such person or sailor, while in such building or while so employed or waiting such transfer, shall, for the purposes of the Act, be held to be on board the vessel by which he arrived.

Administration.

6. The Governor in Council may,—

(a) appoint one or more persons to carry the provisions of the Act into effect;

(b) assign any duty in connection therewith to any officer or person in the employ of the Government of Canada;

(c) define and prescribe the duties of such officer or person;

(d) fix the salary or remuneration to be allowed to such person or officer;

(e) engage and pay interpreters skilled in the English and Chinese languages, at salaries aggregating not more than three thousand dollars a year;

(f) make regulations for the carrying out of the Act.

Taxes and Exemptions.

7. Every person of Chinese origin, irrespective of allegiance, shall pay into the Consolidated Revenue Fund of Canada, on entering Canada, at the port or place of entry, a tax of five hun-

dred dollars, except the following persons who shall be exempt from such payment, that is to say:—

(a) The members of the diplomatic corps, or other government representatives, their suites and their servants, and consuls and consular agents;

(b) The children born in Canada of parents of Chinese origin and who have left Canada for educational or other purposes, on substantiating their identity to the satisfaction of the controller at the port or place where they seek to enter on their return;

(c) (1) Merchants, their wives and minor children;

(2) The wives and minor children of clergymen;

(3) Tourists;

(4) Men of science;

(5) (Subject to such regulations as may from time to time be made by the Governor in Council) duly certified teachers;

who shall substantiate their status to the satisfaction of the controller, subject to the approval of the Minister, or who are bearers of certificates of identity, or other similar documents issued by the Government or by a recognized official or representative of the Government whose subjects they are, specifying their occupation and their object in coming into Canada.

2. Every such certificate or other document shall be in the English or French language, and shall be examined and endorsed (*visé*) by a British consul or *chargé d'affaires* or other accredited representative of His Majesty, at the place where it is granted or at the port or place of departure.

3. A student of Chinese origin who upon first entering Canada has substantiated his status as such to the satisfaction of the controller subject to the approval of the Minister, and who is the bearer of a certificate of identity, or other similar document issued by the Government or a recognized official or representative of the Government whose subject he is, and who at that time satisfies the controller that he is entering Canada for the purpose of securing a higher education in one of the recognized universities, or in some other educational institution approved by the Governor in Council for the purposes of this section, and who afterwards furnishes satisfactory proof that he has been a bona

fide student in such university or educational institution for a period of one year shall be entitled to a refund of the tax paid by him upon his entry into Canada.

4. Notwithstanding anything in the Act, and subject to such regulations as are made for the purpose by the Governor in Council, any Chinese immigrant, whose destination is a place in Canada other than the port or place at which he enters Canada, may pass through to his destination and pay the tax hereinbefore provided for only upon his reaching his destination.

8. The controller shall deliver to each Chinese immigrant who has been permitted to land or enter, and in respect of whom the tax has been paid as hereinbefore provided, a certificate containing a description of such individual, the date of his arrival, the name of the port of his landing and an acknowledgment that the tax has been duly paid; and such certificate shall be *prima facie* evidence that the person presenting it has complied with the requirements of the Act; but such certificate may be contested by His Majesty or by any officer charged with the duty of carrying the Act into effect, if there is reason to doubt the validity or authenticity thereof, or of any statement therein contained; and such contestation shall be heard and determined in a summary manner by any judge of a superior court of any province of Canada, where such certificate is produced.

Number of Immigrants Limited.

9. No vessel carrying Chinese immigrants to any port in Canada shall carry more than one such immigrant for every fifty tons of its tonnage.

10. No Chinese immigrants shall be allowed to land in or enter Canada coastwise or overland arriving in transit from any port or place in America from any vessel entering at such port or place, in excess of the number which would have been allowed to land from such vessel had it come direct to Canada.

The Landing of Chinese Immigrants.

11. No master of any vessel carrying Chinese immigrants shall land any person of Chinese origin, or permit any to land from such vessel, until a permit so to do, stating that the provisions of the Act have been complied with, has been granted to the master of such vessel by the controller.

12. No controller at any port shall grant a permit allowing

Chinese immigrants to land until the quarantine officer has granted a bill of health, and has certified, after due examination, that no leprosy or infectious, contagious, loathsome or dangerous disease exists on board such vessel; and no permit to land shall be granted to any Chinese immigrant who is suffering from leprosy or from any infectious, contagious, loathsome or dangerous disease.

13. Every conductor or other person in charge of any railway train or car bringing Chinese immigrants into Canada shall be personally liable to His Majesty for the payment of the tax of five hundred dollars imposed by the Act in respect of any immigrant brought by or on such railway train or car, and shall, unless such persons are in transit through Canada, pay or cause to be paid to the controller the total amount of the tax payable by Chinese immigrants so arriving by such railway train or car, and he shall not allow any such immigrants to disembark from such train or car, until after such tax has been paid.

14. Every conductor or other person in charge of any railway train or car bringing Chinese immigrants into Canada shall, immediately on his arrival, deliver to the controller or other officer at the port or place of arrival a report containing a complete and accurate list of all persons of Chinese origin arriving by or being on board of the railway train or car of which he is in charge, and showing their names in full, the country and place of their birth, their occupation and last place of domicile; and he shall not allow any such immigrants to disembark from such train or car until after such report has been made.

15. Every master of any vessel bringing Chinese immigrants to any port or place in Canada shall be personally liable to His Majesty for the payment of the tax imposed by this Act in respect of any such immigrant carried by such vessel, and shall deliver to the controller, immediately on his arrival in port and before any of his Chinese crew or passengers disembark, a complete and accurate list of his crew and such passengers, showing their names in full, the country and place of their birth, and the occupations and last place of domicile of each of such immigrant passengers.

Registration Upon Entry.

16. Every Chinese immigrant who enters Canada otherwise than by disembarking from any vessel or vehicle, shall forthwith make a statement and declaration of his entry to the controller or other proper officer at the nearest or most convenient port or place, and shall forthwith pay to such controller or officer the tax of five hundred dollars imposed by the Act; and, if the statement and declaration is made to an officer other than a controller authorized to keep a register, such officer shall report the fact and transmit the tax to the Chief Controller or to the nearest controller so authorized, and the controller shall make a record thereof in his register and issue the proper certificate of such registration in conformity with the provisions of the Act.

17. The Chief Controller, and such controllers as are by him authorized so to do, shall each keep a register of all persons to whom certificates of entry have been granted.

Prohibited Immigrants.

18. No controller or other officer charged with the duty of assisting in carrying the provisions of the Act into effect shall grant a permit allowing to land from any vessel, nor shall any conductor or other person in charge of any vehicle bring into Canada, either as an immigrant or as an exempt, or as in transit, any person of Chinese origin who is,—

(a) a pauper or likely to become a public charge;

(b) an idiot or insane;

(c) suffering from any loathsome, infectious or contagious disease;

(d) a prostitute or living on the prostitution of others.

2. All such persons are prohibited from entering Canada.

Chinese In Transit.

19. Persons of Chinese origin may pass through Canada in transit, from one port or place out of Canada to another port or place out of Canada, without payment of the tax of five hundred dollars imposed by the Act: Provided that such passage is made in accordance with, and under such regulations as are made for the purpose by the Governor in Council.

Re-Entry.

20. Every person of Chinese origin who wishes to leave Canada, with the declared intention of returning thereto, shall give written notice of such intention to the controller at the port or place whence he proposes to sail or depart, in which notice shall be stated the foreign port or place which such person wishes to visit, and the route he intends taking both going and returning, and such notice shall be accompanied by a fee of one dollar.

2. The controller shall thereupon enter in a register to be kept for the purpose, the name, residence, occupation and description of the said person, and such other information regarding him as is deemed necessary, under such regulations as are made for the purpose.

21. The person registered shall be entitled on his return, if within twelve months of such registration, and on proof of his identity to the satisfaction of the controller, as to which the decision of the controller shall be final, to free entry as an exempt or to receive from the controller the amount of the tax, if any, paid by him on his return; but if he does not return to Canada within twelve months from the date of such registration, he shall, if returning after that date, be subject to the tax of five hundred dollars imposed by the Act in the same manner as in the case of a first arrival.

Penalties and Forfeitures.

22. The owner of any vessel carrying Chinese immigrants to any port in Canada shall incur a penalty of two hundred dollars for each Chinese immigrant therein carried in excess of one for every fifty tons of such vessel's tonnage.

23. The master of any vessel carrying Chinese immigrants shall incur a penalty of five hundred dollars if he lands or permits to land in Canada from such vessel any person of Chinese origin without the permit therefor required by the Act.

24. Every master or conductor of any vessel or vehicle who lands or allows to be landed off or from any vessel or vehicle any Chinese immigrant before the tax payable under the Act has been duly paid, or who wilfully makes any false statement respecting the number of persons on board his vessel or vehicle, shall, in

addition to the amount of the tax payable under the foregoing provisions of the Act, be liable to a penalty not exceeding one thousand dollars and not less than five hundred dollars for every such offence, and, in default of payment, to imprisonment for a term not exceeding twelve months; and such vessel or vehicle shall be forfeited to His Majesty, and shall be seized by an officer charged with the duty of carrying the Act into effect, and dealt with accordingly.

25. If any person of Chinese origin who is,—

(a) a pauper or likely to become a public charge;

(b) an idiot or insane;

(c) suffering from any loathsome, infectious or contagious disease; or

(d) a prostitute or living on the prostitution of others; enters Canada, he or she shall be liable to imprisonment for a term not exceeding six months, and shall in addition be liable to deportation, and the master, conductor or other person who knowingly lands or brings or assists or permits to land in Canada, any such persons of Chinese origin, shall also be liable to a penalty not exceeding two hundred dollars, or to imprisonment for a term not exceeding six months.

26. If any railway or other transportation company, having undertaken to transport through Canada any person of Chinese origin in transit, fails to comply with any regulations of the Governor in Council in that behalf, such company shall be subject to a penalty not exceeding five hundred dollars.

27. Every person of Chinese origin who—

(a) lands or attempts to land in Canada without payment of the tax payable under the Act; or—

(b) wilfully evades or attempts to evade any of the provisions of the Act as respects the payment of the tax by personating any other individual; or—

(c) wilfully makes use or attempts to make use of any forged or fraudulent certificate or of a certificate issued to any other person for any purpose connected with the act;

is guilty of an indictable offence, and liable to imprisonment for a term not exceeding twelve months or to a fine not exceeding five hundred dollars, or to both, and shall also be liable to deportation.

2. Every person who wilfully aids and abets any such person of Chinese origin in any evasion or attempt at evasion of any of the provisions of the Act, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five hundred dollars or to both.

27A. In any case where a person of Chinese origin is liable to deportation under the provisions of the Act, such person may upon the order of the Minister be apprehended without further warrant by any immigration agent or other government officer, and may, by force if necessary, be compelled to return to or be taken on board a vessel or railway car and to leave Canada.

2. Every immigrant deported under this section shall be carried, by the same transportation company or companies which brought him into Canada, to the port from which he came to Canada, without receiving the usual payment for such carriage.

3. In case he was brought into Canada by a railway company such company shall similarly convey him or secure his conveyance from the municipality or locality whence he is to be deported to the country whence he was brought.

4. Every owner or master of a vessel and every railway company or person who refuses to take any such person on board such vessel or car shall incur a penalty not exceeding five hundred dollars for each offence: Provided however that if the owner, master or crew of the vessel, or the officers and employees of the railway company, have not in any way aided or been parties to the violation of the law for which such person of Chinese origin is being deported, they shall not be obliged to convey such person unless the company is paid the reasonable passage money or fare for the transportation of such person.

28. Every person who takes part in the organization of any sort of court or tribunal composed of Chinese persons, for the hearing and determination of any offence committed by a Chinese person, or in carrying on any such organization or who takes part in any of its proceedings, or who gives evidence before any such court or tribunal, or assists in carrying into effect any decision, decree, or order of any such court or tribunal, is guilty of an indictable offence and liable to imprisonment for any term not exceeding twelve months, or to a fine not exceeding five hundred dollars, or to both; but nothing in this section shall be construed to prevent Chinese persons from submitting any dif-

ferences or disputes to arbitration, if such submission is not contrary to the laws in force in the province in which such submission is made.

29. Every person who molests, persecutes or hinders any officer or person appointed to carry the provisions of the Act into effect is guilty of an indictable offence, and liable to imprisonment for a term not exceeding twelve months, or to a fine not exceeding five hundred dollars, or to both.

30. Every person who violates any provision of the Act for which no special punishment is herein provided, is guilty of an indictable offence, and liable to a fine not exceeding five hundred dollars, or to imprisonment for a term not exceeding twelve months.

Procedure.

31. All suits or actions for the recovery of taxes or penalties under the Act, and all prosecutions for contraventions of the Act which are not herein declared to be indictable offences, shall be tried before one or more justices of the peace, or before the recorder, police magistrate or stipendiary magistrate having jurisdiction where the cause of action arose or where the offence was committed.

Appropriation of Revenues.

32. All taxes, pecuniary penalties, and revenues from other sources under the Act shall be paid into and form part of the Consolidated Revenue Fund of Canada; but, subject to such conditions and regulations as are prescribed by order of the Governor in Council, one-half part of the net proceeds of all such taxes paid by Chinese immigrants on entering Canada shall, at the end of every fiscal year, be paid out of such fund to the province wherein they were collected.

Regulations.

The following regulations by Order in Council of the 27th day of April, 1910, based upon the Chinese Immigration Act, are attached hereto for general information:—

CHINESE IN TRANSIT.

1. Persons of Chinese origin in transit shall be those persons who enter Canada,—

(a) for the purpose of passing in continuous journey through Canada to a port of exit out of Canada; or

(b) for the purpose of passing in continuous journey to a point of destination in Canada; or,

(c) who may be detained at any time while in transit for the purpose of investigation as to their right to such transit; or,

(d) on any vessel entering a Canadian port, such Chinese being members of the ship's list of officers, crew or other employes; or

(e) who are subsequently detained at the port of entry pending substantiation of status under the exempt clauses of the Chinese Immigration Act.

2. A bond or bonds in favour of His Majesty for such sum or sums as the Chief Controller of Chinese Immigration may deem sufficient to cover the capitation tax or penalty provided for in chapter 95 of the Revised Statutes of Canada of 1906, and amendments thereto, shall be deposited with the said Chief Controller by the transportation companies hereinafter described in section 3 hereof, carrying Chinese in transit as described in section 1 hereof before any of the said persons of Chinese origin shall be permitted to land in or enter Canada.

3. The transportation companies desiring to transport Chinese in transit and from whom bonds in lieu of the payment of the capitation tax shall be required, shall be,—

(a) Any steamship company, railway or other transportation company, having through transportation facilities between the Orient to any port in Canada situate on the Pacific coast and from thence through Canada by railway to another port or place in Eastern Canada.

(b) Any steamship company running a regular line of steamers on the Pacific ocean between Canada and any British or foreign port or ports.

4. In lieu of such bond or bonds referred to in section 2, any

steamship company, railway or transportation company may deposit with the Chief Controller or other officer having control at the port of arrival, a sum in lawful currency of Canada equal to the capitation tax payable on any or all persons of Chinese origin in transit, such sum to be held until it be shown that the person or persons of Chinese origin so designated for such transport have been lawfully passed out of Canada, whereupon such sum shall be repaid to the company depositing the same.

5. In the transportation through Canada of persons of Chinese origin the railway or other transportation company which undertakes such transport shall strictly conform to the following regulations or requirements:—

(a) Such persons of Chinese origin must be reported inwards in the manner required by the Chinese Immigration Act.

(b) They must be manifested forward to the intended port of exit in the usual manner. Such port of exit must be one of the following ports and no other, that is to say:

Victoria and Vancouver, in the Province of British Columbia.

St. John in the Province of New Brunswick.

Halifax and North Sydney in the Province of Nova Scotia.

And during the season of open navigation on the the River St. Lawrence when the ultimate destination of such person of Chinese origin in transit is transoceanic, the ports of Montreal and Quebec in the Province of Quebec.

(c) The manifest must show the full name and description of each individual in as complete a manner as would be required for registration were they to remain in Canada.

(d) The original manifest prepared at the port of entry shall be enclosed in a sealed envelope and addressed to the Collector of Customs at the intended port of exit from Canada and delivered to the conductor in charge of the train by which such individuals are despatched, and shall be delivered by the conductor in charge of such train on its arrival at the designated port of exit to the Collector of Customs there. A copy of the manifest marked "duplicate" shall be mailed direct by the Collector of Customs at

the port of entry to the Collector of Customs at the port of exit.

(e) Chinese manifested on a port of exit who desire to pay the Capitation Tax at an interior port and remain in Canada, may do so, provided the train manifest of such Chinese persons is delivered by the Conductor of the train to the Collector at the interior port where the Capitation Tax is to be paid. The Collector of the interior port shall, after registration of the Chinese, place upon the manifest the registration number, and sign the same, and shall then forward the manifest to the Collector at the port of exit upon which the original manifest was made.

(f) The railway or other company transporting such persons of Chinese origin shall, while they are in transit through Canada, keep them in the car in which embarked until its arrival at the designated port of exit, when they shall be transferred to the building referred to in the Act, for detention until the requirements of the Act have been complied with, where they shall remain until the vessel in which they are to leave Canada is ready to depart, whereupon they shall be taken directly on board after the collector or other officer in control has satisfied himself that the individuals produced are those named and described in the manifest.

(g) The Collector of Customs at the port of exit shall, after checking the original manifest with the Chinese described thereon and satisfying himself that the said Chinese have passed outside of Canada, cancel the said manifest and return the mail copy by mail to the sending port, retaining the train copy of his file.

(h) The cars in which such persons of Chinese origin are conveyed through Canada and the buildings in which temporarily detained, shall be such as are fitted with all sanitary conveniences.

(i) All persons of Chinese origin in transit through Canada passing outward or inward at frontier ports or sea ports, or destined to an interior port or other port in Canada must be reported by Collectors of Customs each month on

Form C. I. 8, copies of which will be furnished upon application to the Chief Controller of Chinese Immigration.

6. All Orders in Council and any Departmental Regulations heretofore made in connection with the transit through Canada of persons of Chinese origin, or which are in any way inconsistent herewith are hereby cancelled.

Teachers Exempt.

Under a Minute of a meeting of the Treasury Board held on May 1, 1909, and approved by His Excellency the Governor General on May 4th of the same year, the following decision was given in the *Chinese Immigration Act*:

"The Treasury Board recommend that authority be granted for the exemption from payment thereof of the Chinese Immigration Tax in the case of those persons of Chinese origin hereinafter described, that is to say:—

Teachers who are eligible to impart instruction in one of the recognized schools or colleges or other educational institution of Canada designed for those whose entire time is given to scholastic work."

Refund to Students.

In the case of those persons of Chinese origin who arrived in Canada since the 20th of July, 1908, and who paid the Capitation Tax of $500 on their arrival, and since that date have been bona fide students in attendance at some university, college, school or other educational institution in Canada for a period of two years *may* be granted a refund of the said tax by His Excellency the Governor General in Council.

Application, however, for such refunds in order to receive consideration, must be made within two and one-half years of the date of arrival, and the application must be accompanied by such statutory proofs and other certificates as may be required from time to time.

6 EDWARD VII.

CHAP. 19.

An Act respecting Immigration and Immigrants.

[*Assented to 13th July, 1906.*]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Short Title.

1. This Act may be cited as the Immigration Act.

Interpretation.

2. In this Act, unless the context otherwise requires,—

(a) The expression "immigrant" means and includes any steerage passenger or any "work-a-way" on any vessel whether or not entered as a member of the crew after the vessel has sailed from its first or last port of departure, any saloon, second class passenger or person who having been a member of the crew has ceased to be such, who, upon inspection is found to come within any class liable to exclusion from Canada, and any person arriving in Canada by railway train or other mode of travel; but it does not include any person who has previously resided in Canada or who is a tourist merely passing through Canada to another country;

(b) The expression "immigration agent" includes the superintendent of immigration, commissioners of immigration and any sub-agents within or outside of Canada;

(c) The expression "land" or "landing," as applied to passengers or immigrants, means their admission (after having complied with the requirements of the Immigration Act), into Canada, otherwise than for inspection or treatment, or other temporary purpose provided by this Act, or by any order in council, or proclamation, or regulation made thereunder;

(d) The expression "master" means any person in command of a vessel;

(e) The expression "medical officer" includes "medical superintendent," "medical inspector" and "inspecting physician;"

(f) The expression "Minister" means the Minister of the Interior;

(g) The expression "owner," as applied to a ship or vessel, includes the charterer of such ship or vessel and the agent of the owner thereof;

(h) The expression "passenger" includes any person carried upon a railway train or other vehicle or in a vessel, other than

the master and crew, as well as all immigrants coming into Canada, but not troops or military pensioners and their families, who are carried in transports or at the expense of the Government of the United Kingdom, or of any colony thereof; Provided that any person who is unlawfully on board the vessel shall not be held to be a passenger;

(i) The expression "port of entry" means any port, railway station, or place at which immigrants enter Canada, or at which there is an immigration agent, or where the medical inspection of immigrants is carried on;

(j) The expression "ship" or "vessel" includes all ships, vessels, boats, or craft of any kind carrying passengers.

3. Every person recognized by the Minister as an immigration agent shall, with reference to any act done or to be done under this Act, and without formal appointment, be deemed to be an immigration agent for the purposes of this Act.

Immigration Offices.

4. The Governor in Council may establish and maintain immigration offices at such places within and outside of Canada as from time to time seems proper.

Appointment, Powers and Duties of Officers.

5. The Governor in Council may appoint a superintendent of immigration, commissioners of immigration, immigration agents, medical officers, and such other officers as the Governor in Council determines.

6. Subject to any regulations in that behalf, the Minister may appoint or employ, either permanently or temporarily, any necessary subordinate officers not provided for in the next preceding section or in any order in council made thereunder, including police guards, inspectors, matrons and nurses to assist immigration agents and medical officers in carrying out the provisions of this Act, and of any orders in council, proclamations or regulations made thereunder, and may confer upon them, and charge them with, such power and duties as he considers necessary or expedient.

7. Subject to the provisions of the regulations in that behalf, immigration agents and medical officers may, in emergency, employ such temporary assistance as may be required, but no

such employment shall continue for a period of more than forty-eight hours without the sanction of the Minister.

8. When, at any port of entry, there is no immigration agent, the chief customs officer at that port shall be, ex-officio, immigration agent.

9. Every officer appointed under this Act shall perform any and all duties prescribed for him by this Act, or by any order in council, proclamation or regulation made thereunder, and shall also perform such duties as are required of him by the Minister, either directly or through any other officer, and no action taken by any such officer under or for the purpose of this Act shall be deemed to be invalid or unauthorized, merely because it was not taken by the officer specially appointed or detailed for the purpose.

Regulations.

10. The Governor in Council may, on the recommendation of the Minister, make such orders and regulations, not inconsistent with this Act, as are considered necessary or expedient for the carrying out of this Act, according to its true intent and meaning and for the better attainment of its objects.

Immigrants—Proportion of Passengers to Size of Vessel.

11. No vessel from any port or place outside of Canada shall come within the limits of Canada having on board, or having had at any time during her voyage,—

(a) any greater number of passengers than one adult passenger for every fifteen clear superficial feet on each deck of such vessel, appropriated to the use of such passengers and unoccupied by stores or other goods not being the personal luggage of such passengers, or—

(b) a greater number of persons, including the master and crew and the cabin passengers, if any, than one for every two tons of the tonnage of such vessel, calculated in the manner used for ascertaining the tonnage of British ships.

2. For the purposes of this section, each person of or above the age of fourteen years shall be deemed an adult, and two persons above the age of one year and under the age of fourteen years shall be reckoned and taken as one adult.

Immigrants—Obligations of Masters of Vessels Bringing Them.

12. The master of any vessel arriving at any port of entry in Canada shall deliver a certified and correct report, in the form prescribed by the regulations in that behalf, to the immigration agent at the port. The master of any vessel shall not permit any passenger to leave the vessel until written permission from the immigration agent to allow his passengers to land has been given to such master.

13, The master of any vessel sailing from a port outside of Canada who embarks passengers after the vessel has been cleared and examined by the proper officer at the port of departure and who does not deliver reports of such additional passengers to the immigration agent at the port of entry shall pay to such immigration agent for every passenger so embarked and not included in the list of passengers delivered to such proper officer at the port of departure, or to the proper officer at the port at which such vessel first touched after the embarkation of such passenger, the sum of twenty dollars for each passenger so embarked as aforesaid and not included in one of the said lists.

14. Nothing in this Act shall prevent the master of any vessel from permitting any passenger to leave the vessel outside of Canada at the request of such passenger before the arrival of the vessel at her final port of destination; but in every such case, the name of the passenger so leaving shall be entered in the manifest on the list of passengers made out at the time of the clearing of the vessel from the port of departure or at the port at which such passenger was embarked, and shall be certified under the signature of the passenger so leaving the vessel.

15. In addition to the particulars hereinbefore required in the report to be delivered on each voyage by the master of any vessel arriving at any port of entry in Canada to the immigration agent at such port, the master shall report in writing to such agent the name and age of all passengers embarked on board of such vessel on such voyage who are lunatic, idiotic, epileptic, deaf and dumb, or dumb, blind or infirm, or suffering from any disease or injury known to exist by the medical officer of the ship, specifying the nature of the disease and stating also whether they are accompanied by relatives able to support them or not.

16. The report shall further contain the name, age and last place of residence of any person who has died during the voyage, and shall specify the cause of death and whether such person was accompanied by relatives or other persons who were entitled to take charge of the moneys and effects left by such person and the disposition made thereof.

2. If there were no such relatives or other persons so entitled, the report shall fully designate the quantity and description of the property, whether money or otherwise, left by such person; and the master of the vessel shall pay over and fully account, to the immigration agent at the port at which the vessel is entered, for all moneys and effects belonging to any person who has died on the voyage.

3. The immigration agent shall thereupon grant to the master a receipt for all moneys or effects so placed in his hands by the master, which receipt shall contain a full description of the nature or amount thereof.

Permission to Leave the Vessel.

17. The immigration agent at a port of entry, after satisfying himself that the requirements of this Act and of any order in council, proclamation or regulation made thereunder have been carried out, shall grant permission to the master of the vessel to allow the passengers to leave the vessel.

18. The master shall furnish the immigration agent, or the medical officer, at the port of entry with a bill of health, certified by the medical officer of the vessel, such bill of health being in the form and containing such information as is required from time to time under this Act.

19. The immigration agent, whenever he deems proper, may request the medical officer before any passengers leave the vessel to go on board and inspect such vessel, and examine and take extracts from the list of passengers or manifest, and from the bill of health.

20. The regulations to be made by the Governor in Council may provide as a condition to permission to enter Canada that immigrants shall possess money to a prescribed minimum amount, which amount may vary according to the class and destination of such immigrant, and otherwise according to the circumstances.

Medical Inspection.

21. The medical inspection of passengers shall be performed at the hours named in the regulations made by the Minister.

22. The immigration agent shall provide suitable facilities for the examination of immigrants at each port of entry, subject to any regulations made by the Minister.

23. The medical officer shall, after inspection, stamp the ship ticket or railway ticket or passport of each passenger who has passed the medical inspection, and the immigration agent shall detain any passenger who has been inspected and not admitted, as required by this Act, or by any Order in Council, proclamation or regulation made thereunder.

24. The immigration agent shall be responsible for the safe-keeping of any person so detained, except while in a hospital or other place of detention under the charge of a medical officer.

25. The medical officer may, from time to time, with the consent and approval of the Minister, make such arrangements as he considers necessary for the care and supervision of immigrants who are detained on board a vessel where hospital facilities on shore do not exist, or, having been permitted to leave the vessel, are detained either for medical treatment or are awaiting deportation.

Immigrants Prohibited from Landing.

26. No immigrant shall be permitted to land in Canada, who is feeble-minded, an idiot, or an epileptic, or who is insane, or has had an attack of insanity within five years; nor shall any immigrant be so landed who is deaf and dumb, or dumb, blind or infirm, unless he belongs to a family who accompany him or are already in Canada and who give security, satisfactory to the Minister, and in conformity with the regulations in that behalf, if any, for his permanent support if admitted into Canada.

27. No immigrant shall be permitted to land in Canada who is afflicted with a loathsome disease or with a disease which is contagious or infectious and which may become dangerous to the public health or widely disseminated, whether such immigrant intends to settle in Canada or only to pass through Canada to settle in some other country; but if such disease is one which is curable within a reasonably short time the immigrant suffering therefrom may, subject to the regulations in that behalf, if any,

be permitted to remain on board where hospital facilities do not exist on shore, or to leave the vessel for medical treatment, under such regulations as may be made by the Minister.

28. No immigrant shall be permitted to land in Canada who is a pauper, or destitute, a professional beggar, or vagrant, or who is likely to become a public charge; and any person landed in Canada who, within two years thereafter, has become a charge upon the public funds, whether municipal, provincial, or federal, or an inmate of or a charge upon any charitable institution, may be deported and returned to the port or place whence such immigrant came or sailed for Canada.

29. No immigrant shall be permitted to land in Canada who has been convicted of a crime involving moral turpitude, or who is a prostitute, or who procures, or brings or attempts to bring into Canada prostitutes or women for purposes of prostitution.

30. The Governor in Council may, by proclamation or order, whenever he considers it necessary or expedient, prohibit the landing in Canada of any specified class of immigrants, of which due notice shall be given to the transportation companies.

31. Acting under the authority of the Minister, the immigration agent, the medical officer, and any other officer or officers named by the Minister for such purpose, may act as a board of inquiry at any port of entry to consider and decide upon the case of any immigrant seeking admission into Canada. The decision of such board touching the right of any such immigrant to land in Canada shall be subject to appeal to the Minister.

2. The Governor in Council may make regulations governing the procedure in connection with inquiries by such boards of inquiry and appeals from their decisions.

32. All railway or transportation companies or other persons bringing immigrants from any country into Canada shall, on the demand of the superintendent of immigration, deport to the country whence he was brought, any immigrant prohibited by this Act or any order in council or regulation made thereunder, from being landed in Canada, who was brought by such railway, transportation company or other person into Canada within a period of two years prior to the date of such demand.

33. Whenever in Canada an immigrant has within two years of his landing in Canada committed a crime involving moral turpitude, or become an inmate of a jail or hospital or other

charitable institution, it shall be the duty of the clerk or secretary of the municipality to forthwith notify the Minister thereof, giving full particulars. On receipt of such information the Minister may, on investigating the facts, order the deportation of such immigrant at the cost and charges of such immigrant as he is able to pay, and if not then at the cost of the municipality wherein he has last been regularly resident, if so ordered by the Minister, and if he is a vagrant or tramp, or there is no such municipality, then at the cost of the Department of the Interior. Every such immigrant shall be carried by the same transportation company or companies which brought him into Canada to the port from which he came to Canada without receiving the usual payment for such carriage. In case he was brought into Canada by a railway company such company shall similarly convey him or secure his conveyance from the municipality or locality whence he is to be deported to the country whence he was brought.

Protection of Immigrants.

34. Every immigrant on any vessel arriving at a port of entry to which the owner or master of such vessel engaged to convey him, if facilities for housing or inland carriage for such immigrant are not immediately available, shall be entitled to remain and keep his luggage on board the vessel twenty-four hours after such arrival, and the master of such vessel shall not, before the expiry of such twenty-four hours, remove any berths or accomodation used by such immigrants.

35. The master of any vessel having immigrants on board, shall land his passengers and their luggage free of expense to the said passengers at any of the usual public landing places at the port of arrival, according to orders which he receives from the immigration agent at the said port, and at reasonable hours as fixed by the immigration agent in accordance with the regulations in that behalf.

36. The Minister or the superintendent of immigration may, from time to time, by instructions to the immigration agent at any port of entry appoint the place at which all passengers arriving at such port shall be landed.

37. At the place so appointed the Minister may cause proper

shelter and accomodation to be provided for the immigrants until they can be forwarded to their place of destination.

38. No person shall, at any port or place in Canada, for hire, reward or gain, or the expectation thereof, conduct, solicit or recommend, either orally or by handbill or placard or in any other manner, any immigrant to or on behalf of any owner of a vessel, or to or on behalf of any lodging house keeper or tavern keeper or any other person, for any purpose connected with the preparations or arrangements of such immigrant for his passage to his final place of destination in Canada, or in the United States or in other territories outside of Canada, or give or pretend to give to such immigrant any information, oral, printed or otherwise, or assist him to his said place of destination, or in any way exercise the vocation of booking passengers, or of taking money for their inland fare, or for the transportation of their luggage, unless such person has first obtained a license from the superintendent of immigration authorizing him to act in such capacity.

39. No person, whether a licensed immigrant runner, or agent or person acting on behalf of any steamboat company, railway company, forwarding company, or hotel or boarding-house keeper or his agent, shall go on board any vessel bringing immigrants into Canada after such vessel has arrived in Canadian waters, or into an immigration building or on any wharf where immigrants are landed, or shall book or solicit any immigrant by such vessel, before the immigrants are landed from such vessel, unless he is authorized so to do by the superintendent of immigration or immigration agent at the port of entry where such vessel is to land its passengers.

40. Every keeper of a tavern, hotel or boarding house in any city, town, village or place in Canada designated by any order in council who receives into his house as a boarder or lodger any immigrant within three months from his arrival in Canada, shall cause to be kept conspicuously posted in the public rooms and passages of his house and printed upon his business card, a list of the prices which will be charged to immigrants per day and week for board and lodging, or both, and also the prices for separate meals, which cards shall also contain the name of the keeper of such house together with the name of the street in which it is situate, and its number in such street. No such

boarding-house keeper, hotel keeper, or tavern keeper shall have any lien on the effects of such immigrant for any amount claimed for such board or lodging for any sum exceeding five dollars.

41. If complaint be made to the Minister or the superintendent of immigration against any railway company or other incorporated company of any offence or violation of this Act, or of any law of the United Kingdom or of any other country, in any matter relating to immigrants or immigration, the Minister may cause such inquiry as he thinks proper to be made into the facts of the case, or may bring the matter before the Governor in Council in order that such inquiry may be made under the Act respecting inquiries concerning public matters.

2. If upon such inquiry, it appears to the satisfaction of the Minister that the company has been guilty of such violation, the Minister may require the company to make such compensation to the person aggrieved, or to do such other thing, as is just and reasonable, or may adopt measures for causing such proceedings to be instituted against the company as the case requires.

42. If both the immigrant parents, or the last surviving immigrant parent of any child or children brought with them in any vessel bound for Canada, die on the voyage, or at any quarantine station or elsewhere in Canada while still under the care of an immigration agent or other officer under this Act, the Minister, or such officer as he deputes for the purpose, may cause the effects of such parents or parent to be disposed of for the benefit of such child or children to the best advantage in his power, or in his discretion to be delivered over to any institution or person assuming the care and charge of such child or children.

43. No officer, seaman or other person on board of any vessel bringing immigrants to Canada shall, while such vessel is in Canadian waters, entice or admit any female immigrant passenger into his apartment, or, except by the direction or permission of the master of such vessel first made or given for such purpose, visit or frequent any part of such vessel assigned to female immigrant passengers.

44. The master of every vessel bringing immigrant passengers to Canada shall, at all times while the vessel is in Canadian waters, keep posted a written or printed notice in the English, French, Swedish, Danish, German, Russian and Yiddish languages, and such other languages as are ordered from time to

time by the superintendent of immigration, containing the provisions of this Act regarding the prevention of intercourse between the crew and the immigrant passengers, and the penalties for the contravention thereof, in a conspicuous place on the forecastle and in the several parts of the said vessel assigned to immigrant passengers, and keep the same so posted during the remainder of the voyage.

2. The immigration agent at the port of entry shall inspect every such vessel upon arrival for evidence of compliance with this section, and shall institute proceedings for any penalty incurred thereunder.

Penalties.

45. If any vessel from any port or place outside of Canada comes within the limits of Canada having on board or having had on board at any time during her voyage—

(a) any greater number of passengers than one adult passenger for every fifteen clear superficial feet on each deck of such vessel appropriated to the use of such passengers and unoccupied by stores or other goods not being the personal luggage of such passengers; or

(b) a greater number of persons, including the master and crew and the cabin passengers, if any, than one for every two tons of the tonnage of such vessel, calculated in the manner used for ascertaining the tonnage of British ships, the master of such vessel shall incur a penalty not exceeding twenty dollars and not less than eight dollars for each passenger or person constituting such excess.

46. If the master of any vessel does not, forthwith after such vessel arrives at any port of entry in Canada, and before any entry of such vessel is allowed, deliver to the immigration agent at the port at which such vessel is to be entered a correct report, in the form prescribed by the regulations in that behalf, of all the passengers on board such vessel at the time of her departure from the port or place whence she last cleared or sailed for Canada, and a true statement of the other particulars mentioned in the said form, he shall incur a penalty of—

(a) twenty dollars for each day during which he neglects so to deliver such list and

(b) eight dollars for each passenger whose name is omitted in such report.

47. If the master of any vessel arriving at any port of entry in Canada permits any passenger to leave the vessel before he has delivered to the immigration agent at any such port a certified and correct report in the form prescribed by the regulations in that behalf, and has received permission from the immigration agent to allow the passengers to land, he shall incur a penalty not exceeding one hundred dollars and not less than twenty dollars for every passenger so leaving the vessel.

48. Every pilot who has had charge of any vessel having passengers on board, and knows that any passenger has been permitted to leave the vessel contrary to the provisions of this Act, and who does not immediately upon the arrival of such vessel in the port to which he engaged to pilot her, and before the immigration agent has given permission to the passengers to leave the vessel, inform the said agent that such passenger or passengers has or have been so permitted to leave the vessel, shall incur a penalty not exceeding one hundred dollars for every passenger with regard to whom he has wilfully neglected to give such information.

49. If the master of any vessel arriving at any port of entry in Canada omits to report in writing to the immigration agent at such port, in the report required by this Act to be delivered by him on each voyage, the name and age of each passenger embarked on board of such vessel on such voyage who is lunatic, idiotic, epileptic, deaf and dumb, or dumb, blind or infirm, or suffering from any disease or injury known to exist by the medical officer of the ship, stating also as to each passenger whether he is accompanied by relatives, able to support him or not, or makes any false report in any of such particulars he shall incur a penalty not exceeding one hundred dollars, and not less than twenty dollars for every passenger in regard to whom any such omission occurs or any such false report is made.

2. The owner of the vessel shall in such case also be liable for the aforesaid penalty, and, if there be more owners than one, such owners shall be so liable jointly and severally; but in any case under this section where a conviction has been obtained against the master of the vessel, no further prosecution against the owner of the vessel shall be instituted.

50. If the master of any vessel arriving at any port in Canada refuses or neglects—

(a) to mention in the report, in the form set forth in the schedule to this Act, the name, age and last place of residence of any person who has died during the passage of the vessel, and to specify whether such passenger was accompanied by relatives or other persons, if any, who would be entitled to take charge of the moneys and effects left by such person, and the disposal made thereof, or

(b) if there be no such relatives, or other persons entitled to take charge of such moneys and effects, to fully designate in the said report the quantity and description of the property, whether money or otherwise, left by such person, and to pay over and fully account therefor to the immigration agent for the port at which the vessel is entered, he shall incur a penalty not exceeding one thousand dollars and not less than twenty dollars.

51. If the master of any vessel arriving at any port of entry in Canada where facilities for housing or inland carriage are not immediately available, compels any immigrant to leave his vessel before the expiration of the period of twenty-four hours after the arrival of the vessel in the port or harbour to which the master or owner of such vessel engaged to convey such immigrant, he shall incur a penalty not exceeding twenty dollars for each such immigrant whom he so compels to leave the vessel.

2. If such master, before the expiration of the said period, removes any berth or accomodation used by any passenger, except with the written permission of the immigration agent at the port of entry, he shall for each removal incur a like penalty of twenty dollars.

52. If the master of any vessel arriving at any port of entry fails or refuses to land the passengers and their luggage, free of expense to the passengers, at one of the usual public landing places at such port of arrival, and according to the orders which he receives from the immigration agent at such port, and at reasonable hours as fixed by such agent in accordance with the regulations in that behalf, if any, he shall incur a penalty of forty dollars for each offence.

53. If the master of any vessel arriving at any port of entry in Canada and having on board such vessel any passengers to whom this Act applies refuses or neglects to land such passengers

and their luggage, free of expense, and by steam tug or other proper tender, if necessary, at the place appointed under section 36 of this Act, and at reasonable hours, fixed as aforesaid, he shall incur a penalty of twenty dollars for each such passenger.

Immigrant Runners, etc.

54. Every person who, at any port or place within Canada, for hire, reward or gain, or the expectation thereof,—

(a) conducts, solicits or recommends, either orally or by handbill or placard, or in any other manner, any immigrant to or on behalf of,—

(i) any owner of a vessel, or

(ii) any railway company, or

(iii) any lodging-house keeper or tavern keeper, or

(iv) any other person,

for any purpose connected with the preparations or arrangements of such immigrant for his passage to his final place of destination in Canada or in the United States or to other territories outside of Canada, or

(b) gives or pretends to give to such immigrant any information, printed or otherwise, or assists him to his said place of destination, or in any way exercises the vocation of booking passengers or of taking money for their inland fare, or for the transportation of their luggage, shall, unless such person has first obtained a license from the superintendent of immigration authorizing him to act in such capacity, incur a penalty of not more than fifty dollars for each offence.

55. Every licensed immigrant runner or agent, or person acting on behalf of any owner of a vessel, railway company, forwarding company or any hotel or boarding-house keeper, or his agent, who goes on board any vessel bringing immigrants into Canada, or books or solicits any immigrant by such vessel, before the immigrants are landed therefrom, unless he is authorized by the immigration agent at the port of entry where such vessel is to land its passengers so to do, shall incur a penalty of twenty-five dollars for each offence.

56. Every person licensed under this Act as an immigrant-runner or agent, or person acting on behalf of any owner of a vessel, railway company, forwarding company or hotel or boarding-house keeper, and every person in his employ who sells to any

immigrant a ticket or order for the passage of such immigrant or for the conveyance of his luggage at a higher rate than that for which it could be purchased directly from the company undertaking such conveyance, and every person who purchases any such ticket from an immigrant for less than its value, or gives in exchange for it one of less value, shall incur a penalty of twenty dollars for each such offence, and the license of such person shall be forfeited.

57. Every keeper of a tavern, hotel or boarding-house in any city, town, village or other place in Canada, designated by Order in Council, who—

(a) neglects or refuses to post a list of prices and to keep business cards in which is printed a list of the prices which will be charged to immigrants per day or week for board or lodging, or both, and the prices for separate meals, and also the name of the keeper of such house, together with the name of the street in which the house is situated and its number in such street, or—

(b) charges or receives, or permits or suffers to be charged or received for boarding or lodging, or for meals in his house, any sum in excess of the prices so posted and printed on such business cards, or—

(c) omits immediately on any immigrant entering such house as a boarder or lodger or for the purpose of taking any meal therein, to deliver to such immigrant one of such printed business cards, shall incur a penalty not exceeding twenty dollars and not less than five dollars.

58. Every such boarding-house keeper, hotel keeper or tavern keeper, who detains the effects of any immigrant by reason of any claim for board or lodging after he has been tendered the sum of five dollars or such less sum as is actually due for the board or lodging of such immigrant, shall incur a penalty not exceeding twenty-five dollars and not less than five dollars, over and above the value of the effects so detained, and he shall also be liable to restore such effects.

2. In the event of any such unlawful detention, the effects so detained may be searched for and recovered under search warrant as in case of stolen goods.

59. Every officer, seaman or other person employed on board of any vessel bringing immigrants to Canada, who while such vessel is in Canadian waters, entices or admits any female im-

migrant into his apartment, or except by the direction or permission of the master of such vessel first given, visits or frequents any part of such vessel assigned to female immigrant passengers, not being cabin passengers, shall incur a penalty equal in amount to his wages for the voyage during which the said offence was committed.

60. Every master of any vessel who, while such vessel is in Canadian waters, directs or permits any officer or seaman or other person employed on board of such vessel to visit or frequent any part of such vessel assigned to immigrants, except for the purpose of doing or performing some necessary act or duty as an officer, seaman or person employed on board of such vessel, shall incur a penalty of twenty-five dollars for each occasion on which he so directs or permits the provisions of this section to be violated by any officer, seaman or other person employed on board of such vessel: This section shall not apply to cabin passengers, or to any part of the vessel assigned to their use.

61. Every master of a vessel bringing immigrants to Canada who neglects to post and keep posted the notice required by this Act to be posted regarding the prevention of intercourse between the crew and the immigrant and the penalties for contravention thereof as required by this Act shall be liable to a penalty not exceeding one hundred dollars for each such offence.

62. If, during the voyage of any vessel carrying immigrants from any port outside of Canada to any part in Canada, the master or any of the crew is guilty of any violation of any of the laws in force in the country in which such foreign port is situate, regarding the duties of such master or crew towards the immigrants in such vessel; or if the master of any such vessel during such voyage commits any breach whatsoever of the contract for the passage made with any immigrant by such master, or by the owner of such vessel, such master or such one of the crew shall, for every such violation or breach of contract, be liable to a penalty not exceeding one hundred dollars and not less than twenty dollars, independently of any remedy which such immigrants complaining may otherwise have.

63. Every person who violates any provision of this Act, or of any Order in Council, proclamation or regulation in respect of which violation no other penalty is provided by this Act, shall incur a penalty not exceeding one hundred dollars.

Recovery of Penalties.

64. Every duty or penalty imposed under the authority of this Act upon the owner, charterer or master of any vessel shall, until payment thereof, be a lien upon any vessel of the company or owner or charterer in respect whereof it has become payable, and may be enforced and collected by the seizure and sale of the vessel, her tackle, apparel and furniture, under the warrant of process of the magistrate or court before whom it has been sued for, and shall be preferred to all other liens or hypothecations except mariners' wages.

2. Every penalty imposed under the authority of this Act upon a railway company shall, until payment thereof, be a lien or charge upon the railway property, assets, rents and revenues of such company.

Procedure.

65. Every prosecution for a penalty under this Act may be instituted at the place where the offender then is, before any justice of the peace having jurisdiction in such place, and may be recovered, upon summary conviction, at the suit of any immigration agent, and the penalties recovered shall be paid into the hands of the Minister of Finance and Receiver General and shall form part of the Consolidated-Revenue Fund of Canada. The justice of the peace may award costs against the offender as in ordinary cases of summary proceedings, and may, in the case of an owner, charterer or master of a vessel, also award imprisonment for a term not exceeding three months, to terminate on payment of the penalty incurred, and may, in his discretion, award any part of the penalty, when recovered, to the person aggrieved by or through the act or neglect of such offender.

66. If it appears to the justice, by the admission of such person or otherwise, that no sufficient distress can be had whereon to levy the moneys so adjudged to be paid he may, if he thinks fit, refrain from issuing a warrant of distress in the case, or, if such warrant has been issued, and upon the return thereof such insufficiency as aforesaid is made to appear to the justice, then such justice shall, by warrant, cause the person ordered to pay such money and costs as aforesaid to be committed to gaol, there to remain without bail for any term not exceeding three months unless such money and costs ordered to be paid, and such costs

of distress and sale as aforesaid are sooner paid and satisfied; but such imprisonment of a master of any vessel shall not discharge the vessel from the lien or liability attached thereto by the provisions of this Act.

67. No conviction or proceeding under this Act shall be quashed for want of form, nor, unless the penalty imposed is one hundred dollars or over, be removed by appeal or certiorari or otherwise into any superior court.

2. No warrant or commitment shall be held void by reason of any defect therein, provided it is therein alleged that the person has been convicted and there is a good and valid conviction to sustain the same.

3. In the case of removal by appeal or certiorari or otherwise of any conviction or proceeding under this Act into any superior court, security shall be given to the extent of $100 for the costs of such removal proceedings to such superior court.

68. All expenses incurred in carrying out the provisions of this Act and of affording help and advice to immigrants and aiding, visiting and relieving destitute immigrants, procuring medical assistance and otherwise attending to the objects of immigration, shall be paid out of any moneys granted by Parliament for any such purpose and under such regulations or under such orders in council, if any, as are made for the distribution and application of such moneys.

69. Every owner or master of a vessel who lands or permits to land therefrom in Canada any immigrant or other passenger, the landing of whom is prohibited by this Act, or by any order in council, proclamation or regulation made thereunder,whether such immigrant or passenger intends to settle in Canada or only intends to pass through Canada to settle in some other country, or who refuses or neglects, when thereunto lawfully required, to take on board his vessel any immigrant or passenger who has has been so landed, shall incur a penalty not exceeding one thousand dollars and not less than one hundred dollars, in the case of each such offence.

70. Any person landed in Canada from a vessel, or brought into Canada by a railway company, in contravention of this Act, or of any order in council or proclamation lawfully issued thereunder, or any person landed for medical treatment who remains in Canada in contravention of such order or proclamation, may

be apprehended, without a warrant, by any immigration agent or other Government officer, and may, by force if necessary, be compelled to return to or to be taken on board the vessel, and, in the case of a railway company, be returned to the country whence he came; and every owner or master of a vessel and every railroad company or other person who violates the provisions of this section or who aids or abets any immigrant or passenger in acting in contravention of such order or proclamation, or who refuses or neglects to take any such immigrant or passenger on board such vessel or the cars of such railway company, shall incur a penalty not exceeding one thousand dollars and not less than one hundred dollars in the case of each such offence.

2. Every railway company which wilfully receives or transports any such immigrant or other passenger, or which refuses or neglects, when thereunto lawfully required, to take on board its cars any such immigrant or passenger, shall be liable to a penalty not exceeding one thousand dollars and not less than one hundred dollars in the case of each such offence.

71. Any person found in Canada who has come into Canada within a period of two years from any other country by any means or mode of conveyance and who would be liable to exclusion or deportation under any of the provisions of this Act relating to immigrants or passengers arriving by ship or railway train may be apprehended and compelled to return to the country when he came.

72. In any case where deportation of the father or head of a family is ordered, all dependent members of the family may be deported at the same time.

73. The following Acts are repealed: chapter 65 of the Revised Statutes, the Immigration Act; chapter 34 of the statutes of 1887; and chapter 14 of the statutes of 1902.

CAPE COLONY.

Summary.

Any person laboring under the disabilities prescribed in the immigration laws of the Colony shall be prohibited from entering the Colony. The prohibition includes any person unable, by reason of deficient education, to draft in an European lang-

uage a satisfactory application for admission; any person lacking visible means of support or likely to become a public charge; any person convicted of murder, rape, theft, fraud, perjury or other infamous crime when the circumstances of the offence render the immigrant undesirable; any person of unsound mind, idiotic or insane; any person who participates in any way in the proceeds of prostitution; and any person deemed undesirable on official information from a public Minister.

Exemptions.

Members of the King's army and navy; officers and crews of all public vessels; accredited representatives of foreign nations; members of the King's volunteer forces duly discharged; wives and minor children of immigrants; persons born in South Africa; Asiatics granted official permission to enter; persons of European birth residing in South Africa; farm or domestic laborers, skilled artisans, mechanics, workmen or miners immigrating under any approved plan provided they are under contract to serve a reputable employer a reasonable time for an adequate wage; and persons proving that they seek admission to escape persecution or punishment for any political or religious offense even if destitute of means of support when licensed to enter by the Minister.

CHILE.

Summary.

The laws of Chile are framed on liberal lines calculated to induce rather than restrict immigration. However, they provide for inspection and investigation by native officials to determine whether prospective immigrants are of the class and character calculated to make useful citizens.

Methods.

Agencies are established in Hamburg and Genoa for the dual purpose of recruiting immigrants and determining their desirability. From the port of embarkation to Chile third class passage will be granted to persons holding a certificate of approval from the government recruiting agents. And skilled workmen, who have held positions of trust or authority as evidence of pro-

ficiency, can secure second class passage. Workmen's tools, machines and baggage will be transported free.

Qualifications.

Every foreigner of European origin or from the United States, under fifty years of age, who is capable of engaging in business or industry or of working at a trade, and supplied with requisite certificates of his status will be admitted to Chile as a free immigrant. But before an immigrant will be accepted for transportation he must present to the Chilean immigration agents a satisfactory certificate of birth; of moral character, habits and life; of trade, industry or business; and of freedom from any incurable or contagious disease.

CUBA.

Summary.

For public protection the Cuban law provides for the exclusion of all insane persons, idiots, paupers or persons likely to become a public charge; persons suffering from a loathsome, dangerous or contagious disease; persons convicted of an infamous crime, felony, or misdemeanor involving moral turpitude; persons practicing, polygamy; persons convicted of felonious crimes, non-political, whose sentence is remitted on condition of immigration; and persons under labor contract assisted in defraying expense of passage.

Any person admitted who is found within one year to come within the provisions of this exclusion law may be deported. Importation of women under contract or otherwise is a felonious crime punishable by fine and imprisonment.

Before embarking for Cuba every immigrant is required to answer in writing a searching list of questions relative to present and prior condition.

FRANCE.

Decree of the 24th Vendemiaire, Year II.[1]

Title III.

Article 6. Every beggar who is known to be a foreigner shall

[1] In force. Martini, L'Expulsion des éstrangers, p. 2.

be conducted to the frontier of the Republic at the expense of the Nation; he shall be given three sous per league up to the first village on foreign territory.

Law of December 3, 1849.

Article 7. The Minister of the Interior shall by means of the police have the power to compel any alien travelling or residing in France to immediately quit French territory, and to cause him to be conducted to the frontier. He shall have the same right with regard to a foreigner who shall have received authority to establish his domicile in France; but after a period of two months the order shall become ineffective if such authorization shall not have been revoked in accordance with the provisions of article 3.[2] In the frontier departments the prefect shall have the same power regarding non-resident aliens, subject, however, to refer the matter immediately to the Minister of the Interior.

Article 8. Any alien who shall have avoided the execution of the provisions set out in the preceding article or in Article 272 of the Penal Code, or who, after having left France under the operation thereof, shall have returned without the permission of the Government, shall be brought before a court and sentenced to an imprisonment of from one to six months. After having served his sentence he shall be conducted to the frontier.

Article 9. The penalties provided by the present law shall be appplied in conformity with the provisions of Article 463 of the Penal Code.

Law of August 8, 1893.

Article 1. * * * Every alien not admitted to domicile who shall arrive in a district for the purpose of exercising a profession there or engaging in commerce or industry shall make a declaration of residence at the *mairie* giving proof of his identity within 8 days of his arrival. * * * *

The foreigner who shall not have made the declaration prescribed by law within the period stated shall be subject to a fine of from fifty to two-hundred francs. * * * *

Article 3. * * * * He who shall have knowingly made a false

[2] Article 3 provides as long as naturalization has not been acquired the authority granted an alien to establish his domicile in France can always be revoked or modified by a decision of the Government rendered in cooperation with the Council of State.

or inexact declaration shall be subject to a fine of from one hundred to three hundred francs, and, if proper, to temporary or indefinite interdiction from French teritory. * * * * * *

GREAT BRITAIN.

Chapter 13.

An Act to Amend the Law With Regard to Aliens.

(11th August 1905.)

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Regulation of Alien Immigration.

1. (1) An immigrant shall not be landed in the United Kingdom from an immigrant ship except at a port at which there is an immigration officer appointed under this Act, and shall not be landed at any such port without the leave of that officer given after an inspection of the immigrants made by him on the ship, or elsewhere if the immigrants are conditionally disembarked for the purpose, in company with a medical inspector, such inspection to be made as soon as practicable, and the immigration officer shall withhold leave in the case of any immigrant who appears to him to be an undesirable immigrant within the meaning of this section.

(2) Where leave to land is so withheld in the case of any immigrant, the master, owner, or agent of the ship, or the immigrant, may appeal to the immigration board of the port, and that board shall, if they are satisfied that leave to land should not be withheld under this Act, give leave to land, and leave so given shall operate as the leave of the immigration officer.

(3) For the purposes of this section an immigrant shall be considered an undesirable immigrant—

(a) if he cannot show that he has in his possession or is in a position to obtain the means of decently supporting himself and his dependents (if any); or

(b) if he is a lunatic or an idiot, or owing to any disease or

infirmity appears likely to become a charge upon the rates or otherwise a detriment to the public; or

(c) if he has been sentenced in a foreign country with which there is an extradition treaty, for a crime, not being an offence of a political character, which is, as respects that country, an extradition crime within the meaning of the Extradition Act, 1870; or

(d) if an expulsion order under this Act has been made in his case;

but, in the case of an immigrant who proves that he is seeking admission to this country solely to avoid prosecution or punishment on religious or political grounds or for an offence of a political character, or persecution, involving danger of imprisonment or danger to life or limb, on account of religious belief, leave to land shall not be refused on the ground merely of want of means, or the probability of his becoming a charge on the rates, nor shall leave to land be withheld in the case of an immigrant who shows to the satisfaction of the immigration officer or board concerned with the case that, having taken his ticket in the United Kingdom and embarked direct therefrom for some other country immediately after a period of residence in the United Kingdom of not less than six months, he has been refused admission in that country and returned direct therefrom to a port in the United Kingdom, and leave to land shall not be refused merely on the ground of want of means to any immigrant who satisfies the immigration officer or board concerned with the case that he was born in the United Kingdom, his father being a British subject.

(4) The Secretary of State may, subject to such conditions as he thinks fit to impose, by order exempt any immigrant ships from the provisions of this section if he is satisfied that a proper system is being maintained for preventing the embarkation of undesirable immigrants on those ships, or if security is given to his satisfaction that undesirable immigrants will not be landed in the United Kingdom from those ships except for the purpose of transit.

Any such order of exemption may be withdrawn at any time at the discretion of the Secretary of State.

(5) Any immigrant who lands, and any master of a ship who allows an immigrant to be landed, in contravention of this section shall be guilty of an offence under this Act, but an immi-

grant conditionally disembarked shall not be deemed to have landed so long as the conditions are complied with.

2. (1) The immigration board for a port shall consist of three persons summoned in accordance with rules made by the Secretary of State under this Act out of a list approved by him for the port comprising fit persons having magisterial, business, or administrative experience.

(2) A Secretary of State may make rules generally with respect to immigration boards and their officers, and with respect to appeals to those boards, and with respect to the conditional disembarkation of immigrants for the purpose of inspection, appeals, or otherwise, and may by those rules amongst other things provide for the summoning and procedure of the board, and for the place of meeting of the board, and for the security to be given by the master of the ship in the case of immigrants conditionally disembarked. Rules made under this section shall provide for notice being given to masters of immigrant ships and immigrants informing them of their right of appeal, and also, where leave to land is withheld in the case of any immigrant by the immigration officer, for notice being given to the immigrant and the master of the immigrant ship of the grounds on which leave has been withheld.

Expulsion of Undesirable Aliens.

3. (1) The Secretary of State may, if he thinks fit, make an order (in this Act referred to as an expulsion order) requiring an alien to leave the United Kingdom within a time fixed by the order, and thereafter to remain out of the United Kingdom—

(a) if it is certified to him by any court (including a court of summary jurisdiction) that the alien has been convicted by that court of any felony, or misdemeanor, or other offence for which the court has power to impose imprisonment without the option of a fine, or of an offence under paragraph twenty-two or twenty-three of section three hundred and eighty-one of the Burgh Police (Scotland) Act, 1892, or of an offence as a prostitute under section seventy-two of the Towns Improvement (Ireland) Act, 1854, or paragraph eleven of section fifty-four of the Metropolitan Police Act, 1839, and that the court recommend that an expulsion order should be made in his case, either in addition to or in lieu of his sentence; and

(b) if it is certified to him by a court of summary jurisdiction after proceedings taken for the purpose within twelve months after the alien has last entered the United Kingdom, in accordance with rules of court made under section twenty-nine of the Summary Jurisdiction Act, 1879, that the alien—

(i) has within three months from the time at which proceedings for the certificate are commenced been in receipt of any such parochial relief as disqualifies a person for the parliamentary franchise, or been found wandering without ostensible means or subsistence, or been living under insanitary conditions due to overcrowding; or

(ii) has entered the United Kingdom after the passing of this Act, and has been sentenced in a foreign country with which there is an extradition treaty for a crime not being an offence of a political character which is as respects that country an extradition crime within the meaning of the Extradition Act, 1870.

(2) If any alien in whose case an expulsion order has been made is at any time found within the United Kingdom in contravention of the order, he shall be guilty of an offence under this Act.

4. (1) Where an expulsion order is made in the case of any alien, the Secretary of State may, if he thinks fit, pay the whole or any part of the expenses of or incidental to the departure from the United Kingdom and maintenance until departure of the alien and his dependents (if any).

(2) If an expulsion order is made in the case of any alien (not being an alien who last entered the United Kingdom before the commencement of this Act, or an immigrant in whose case leave to land has been given under this Act) on a certificate given within six months after he has last entered the United Kingdom, the master of the ship in which he has been brought to the United Kingdom and also the master of any ship belonging to the same owner shall be liable to pay to the Secretary of State as a debt due to the Crown any sums paid by the Secretary of State under this section in connection with the alien, and shall, if required by the Secretary of State, receive the alien and his dependents (if any) on board his ship, and afford them free of charge a passage to the port of embarkation and proper accomodation and maintenance during the passage.

(3) If the master of a ship fails to comply with the provisions of this section as to giving a passage to an alien or his dependents, he shall be guilty of an offence under this Act.

General.

5. (1) The master of any ship landing or embarking passengers at any port in the United Kingdom shall furnish to such person and in such manner as the Secretary of State directs a return giving such particulars with respect to any such passengers who are aliens as may be required for the time being by order of the Secretary of State, and any such passenger shall furnish the master of the ship with any information required by him for the purpose of the return.

(2) If the master of a ship fails to make the return required by this section, or makes a false return, he shall be guilty of an offence under this Act, and if any alien refuses to give information required by the master of the ship for the purpose of the return under this section, or gives any false information for the purpose, he shall be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour.

(3) The Secretary of State may by order exempt from the provisions of this section any special class of passengers or voyagers, or any special ships or ports, but any such order may be withdrawn at any time at his discretion.

6. (1) The Secretary of State shall appoint, at such ports in the United Kingdom as he thinks necessary for the time being, immigration officers and medical inspectors, and may appoint or employ such officers or persons as may be required for the purposes of immigration boards, or for the purpose of the returns to be given under this Act, or otherwise for carrying this Act into effect, and the salary and remuneration of any officers, inspectors, or persons so appointed or employed, and any expenses otherwise incurred in carrying this Act into effect (including such payment as may be sanctioned by the Treasury for the attendance of any person as a member of an immigration board to hear appeals), shall, up to an amount approved by the Treasury, be paid out of moneys provided by Parliament.

(2) The Secretary of State may arrange with the Commissioners of Customs or any other Government department or any port sanitary authority for the appointment or employment of

officers of Customs or officers of that department or authority as officers under this Act.

(3) The Secretary of State shall make known, in such manner as he thinks best suited for the purpose, the ports at which immigration officers are for the time being appointed under this Act.

7. (1) Any person guilty of an offence under this Act shall, if the offence is committed by him as the master of a ship, be liable, on summary conviction, to a fine not exceeding one hundred pounds, and, if the offence is committed by him as an immigrant or alien, be deemed a rogue and vagabond within the meaning of the Vagrancy Act, 1824, and be liable to be dealt with accordingly as if the offence were an offence under section four of that Act.

(2) Sections six hundred and eighty-four, six hundred and eighty-five, and six hundred and eigthy-six of the Merchant Shipping Act, 1894 (which relate to the jurisdiction of courts and justices), shall apply with respect to jurisdiction under this Act as they apply with respect to jurisdiction under that Act, and section six hundred and ninety-three of the Merchant Shipping Act, 1894 (which relates to the levying of sums ordered to be paid by distress on a ship), shall apply with respect to any fines or other sums of money to be paid under this Act by the master of a ship as it applies with respect to fines and other sums of money to be paid under that Act.

(3) Any immigrant who is conditionally disembarked, and any alien in whose case an expulsion order is made, while awaiting the departure of his ship, and whilst being conveyed to the ship, and whilst on board the ship until the ship finally leaves the United Kingdom, and any alien in whose case a certificate has been given by a court, with a view to the making of an expulsion order under this Act, until the Secretary of State has decided upon his case, shall be liable to be kept in custody in such manner as the Secretary of State directs, and whilst in that custody shall be deemed to be in legal custody.

(4) If any immigrant, master of a ship, or other person, for the purposes of this Act, makes any false statement or false representation to an immigration officer, medical inspector, immigration board, or to the Secretary of State, he shall be liable on sum-

mary conviction to imprisonment for a term not exceeding three months with hard labour.

(5) If any question arises on any proceedings under this Act, or with reference to anything done or proposed to be done under this Act, whether any person is an alien or not, the onus of proving that that person is not an alien shall lie on that person.

(6) In carrying out the provisions of this Act, due regard shall be had to any treaty, convention, arrangement, or engagement with any foreign country.

8. (1) The expression "immigrant" in this Act means an alien steerage passenger who is to be landed in the United Kingdom, but does not include—

(a) Any passenger who shows to the satisfaction of the immigration officer or board concerned with the case that he desires to land in the United Kingdom only for the purpose of proceeding within a reasonable time to some destination out of the United Kingdom; or

(b) Any passengers holding prepaid through tickets to some such destination, if the master or owner of the ship by which they are brought to the United Kingdom, or by which they are to be taken away from the United Kingdom, gives security to the satisfaction of the Secretary of State that, except for the purposes of transit or under other circumstances approved by the Secretary of State, they will not remain in the United Kingdom, or, having been rejected in another country re-enter the United Kingdom, and that they will be properly maintained and controlled during their transit.

(2) The expression "immigrant ship" in this Act means a ship which brings to the United Kingdom more than twenty alien steerage passengers, who are to be landed in the United Kingdom, whether at the same or different ports, or such number of those passengers as may be for the time being fixed by order of the Secretary of State, either generally or as regards any special ships or ports.

(3) The expression "passenger" in this Act includes any person carried on the ship other than the master and persons employed in the working, or service, of the ship, and the expression "steerage passenger" in this Act includes all passengers except such persons as may be declared by the Secretary of State to be

cabin passengers by order made either generally or as regards any special ships or ports.

(4) If any question arises under this Act on an appeal to an immigration board whether any ship is an immigrant ship within the meaning of this Act, or whether any person is an immigrant, a passenger, or a steerage passenger, within the meaning of this Act, or whether any offence is an offence of a political character, or whether a crime is an extradition crime, that question shall be referred to the Secretary of State in accordance with rules made under this Act, and the board shall act in accordance with his decision.

(5) The Secretary of State may withdraw or vary any order made by him under this section.

9. (1) In the application of this Act to Scotland and Ireland the words "be liable on summary conviction to imprisonment for a term not exceeding three months with hard labour" shall be substituted for the words "be deemed a rogue and vagabond within the meaning of the "Vagrancy Act, 1824, and be liable to be dealt with accordingly as if "the offence was an offence under section four of that Act."

(2) Section thirty-three of the Summary Procedure (Scotland) Act, 1864, shall be substituted as respects Scotland for section twenty-nine of the Summary Jurisdiction Act, 1879; and the Lord Chancellor of Ireland may, as respects Ireland, make rules for the purposes of this Act for which rules may be made under section twenty-nine of the Summary Jurisdiction Act, 1879; and all rules so made shall be laid, as soon as may be, before both Houses of Parliament.

10. (1) This Act may be cited as the Aliens Act, 1905, and shall come into operation on the first day of January nineteen hundred and six.

(2) The Registration of Aliens Act, 1836, is hereby repealed.

I. GEO. V.

A Bill to Amend the Aliens Act, 1905. A. D. 1911.

Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) Every alien immigrant who is landed in the United Kingdom after the *passing of this Act* shall, within three days, send in writing for registration to the chief officer of police of the district in which he is at the time of making the return, a return in the form specified in the First Schedule to this Act, and whenever such alien changes his place of abode he shall notify within twenty-four hours in writing such change to the chief officer of police in the district to which he goes, and also to the chief officer of police of the district that he has left.

(2) If any such alien fails to comply with the provisions of this section he shall be liable on summary convicton to a fine not exceeding *twenty pounds,* and in addition to or in lieu of such fine, he may be required to leave the United Kingdom under an expulsion order, which order the Secretary of State is hereby empowered to make, if it is certified to him by a court of summary jurisdiction that the alien has been convicted by that court of an offence under this section.

(3) A separate return under this section shall not be required in the case of an alien immigrant under the age of sixteen years residing or living as a dependent with an alien who is required under this section to make a return.

(4) A copy of the form specified in the Schedule to this Act shall be given to every alien immigrant before he is landed by the immigration officer.

2. Where an alien has been convicted by any court of any of the offences specified in section three, subsection (1) of the principal Act, the court shall, whether or not it recommended that an expulsion order should be made in the case of the alien so convicted, send, as soon as may be after the conviction, particulars in writing to the Secretary of State, and the Secretary of State may, if he thinks fit, make an expulsion order in the case of the alien so convicted either in addition to or in lieu of any other punishment to which the alien may have been sentenced, notwithstanding that the court has not recommended the making of an expulsion order.

3. Officers of local authorities charged with the duty of carrying out inspections under the Public Health Acts or other Acts shall report to the local authority all cases in which a person whom they have reasonable cause to believe to be an alien is living under insanitary conditions, due to overcrowding, and un-

less the local authority itself takes proceedings under section three, subsection (1) (b) of the principal Act against the alien concerned, it shall report particulars of every such case to the chief officer of police of the district in which such overcrowding is reported to exist.

4. (1) An alien shall not purchase or have in his custody or possession a pistol unless he shall first have applied for and obtained from the chief officer of police of the district in which he resides a certificate authorizing him to have a pistol in his custody or possession.

(2) If the chief officer of police in the exercise of his discretion shall decline to grant such certificate to an alien, the alien may appeal to a court of summary jurisdiction within the district, and that court shall, if it is satisfied that the certificate has been unreasonably withheld, grant such certificate.

(3) A certificate granted under this section may be cancelled at any time by a court of summary jurisdiction if it is shown to the satisfaction of the court that the alien to whom the certificate has been granted is not a fit person to have a pistol in his custody or possession.

(4) Any alien having in his custody or possession a pistol shall produce a certificate under this section if required to do so by any officer of police or constable.

(5) If any alien acts in contravention of the provisions of this section he shall be guilty of offence under the principal Act.

(6) If any person knowingly gives, sells, lets, or lends, a pistol to any alien without the previous production to him by such alien of a certificate under this section he shall be guilty of an offence under this Act, and shall be liable on summary conviction to a fine not exceeding *twenty pounds.*

5. (1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for supposing that an alien is in possession of a pistol in contravention of the provisions of this or any other Act, he may grant a search warrant to any constable or constables named therein.

(2) A search warrant granted under this section shall authorize any constable named therein to enter the abode of the alien, or any place where any such constable has reasonable grounds for supposing the alien to be, if need be by force, to arrest the alien and take the names, nationalities, and addresses of any

other persons upon the premises, and to seize any pistol found on the premises or in possession of the alien or of any person upon the premises.

(3) Where it appears to a superintendent or other officer of police of equal or superior rank that the case is one of emergency, and that the delay in obtaining a warrant would be likely to endanger life, and such superintendent or officer has reasonable cause to believe that an offence under this Act has been or is being committed with respect to a pistol in any place, a constable may, if authorized by written order from such superintendent or officer enter and search, if necessary by force, and do all such things as if he were a constable named in a search warrant under this section.

(4) A person obstructing a constable or officer in the execution of his duty under this section shall be guilty of an offence under this Act, and shall be liable on summary conviction to a fine not exceeding *twenty* pounds.

6. (1) Where any person certifies that he purposes to give employment to an alien immigrant, leave to land shall not be granted solely on the strength of this statement by the immigration officer on board concerned with the case, unless and until, either

(a) in the case of trade for which a trade board has fixed a minimum rate which has not yet been made obligatory, the said person has given written notice in the manner provided by the Trade Boards Act, 1909, section seven, subsection (1) paragraph (b) that he is willing that the rate should be obligatory on him in all respects; or

(b) in the case of other trades, the said person has made a declaration that all the persons then in his employment are paid rates of wages recognized as fair for Government and municipal contracts for the particular class of work and for the particular district concerned and that such rates will be paid to the alien immigrant.

(2) If any person makes any false statement or false representation for the purposes of this section he shall be guilty of an offence under section seven, subsection (4) of the principal Act.

7. Before any rule or order (other than an expulsion order) is made by the Secretary of State under the principal Act of this Act, a draft thereof shall be laid before each House of Parliament

for a period of not less than thirty days during the session of Parliament, and if either of the Houses before the expiration of those thirty days presents an address to His Majesty against the draft, or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft order.

8. In this Act and the principal Act, unless the context otherwise requires,—

The expression "principal Act" means the Aliens Act, 1905;

The term "pistol" means a firearm or weapon of any description from which any shot, bullet, or other missile can be discharged, and of which the length of barrel, not including any revolving, detachable, or magazine breech, does not exceed nine inches;

The expression "immigrant ship" means a ship which brings to the United Kingdom an alien steerage passenger who is to be landed in the United Kingdom.

9. The provisions of the principal Act specified in the Second Schedule of this Act are hereby repealed.

10. This Act shall come into operation on the first day of January nineteen hundred and twelve.

11. This Act may be cited as the Aliens Act (1905) (Amendment) Act, 1911, and shall be construed as one with the Aliens Act, 1905; and that Act and this Act may be cited together as the Aliens Acts.

ITALY.

Law of December 22, 1888.

(In connection with the new penal code as provided by the decree of June 30 1889.)[1]

Title III, Chapter II.

* * * * * * * *

Article 90. Foreigners who have been convicted of a crime may, after their sentence has expired, be expelled from the Kingdom and conducted to the frontier.

The Minister of the Interior shall, for the interest of public

[1] See Annuaire de législation étrangère de 1889, p. 409.

safety, have the power to order that a foreigner either passing through or residing in the Kingdom shall be expelled and conducted to the frontier. This provision is not applicable to Italians residing outside the territorial limits of the Kingdom.

Article 91. A foreigner who has been expelled shall not reenter the Kingdom without a special permit issued by the Minister of the Interior.

In case of the violation hereof he shall be punished by imprisonment of at most six months duration.

After having served his sentence such alien shall be again expelled.

Article 92. The prefects of the frontier provinces are authorized, on grounds of public safety, to expel from the frontier communities aliens coming within the provisions of article 90. Extraordinary cases shall be referred to the Minister. They are also empowered to prevent foreigners from crossing the frontier if they are unable to establish their identity or if they are without means of support.

Article 93. Those who are sent back to their county of origin and provided with an official itinerary shall not depart from the route designated therein. If they depart therefrom they shall be delivered to the magistrate of the place where they shall be found. The penalty of imprisonment for one month or more is applicable in case of a violation of this article.

On the termination of his sentence such an alien shall proceed, under escort, along the route designated. The same provision is applicable to those who shall not, within the term fixed by law, appear before the public safety authorities indicated in the itinerary.

JAMAICA.

LAW 25 OF 1905.

The Immigration of Paupers (Prevention) Law, 1905.
[27th May, 1905.]

Be it enacted by the Governor and Legislative Council of Jamaica, as follows:—

1. (1) If on the arrival of any ship at this colony there is on board any person, not a native of or domiciled in this colony,

who in the opinion of the Harbour Master, or of the Health Officer, or of the Senior Officer of Customs in the port is unable by reason of physical or mental infirmity to maintain himself, or who is likely, if permitted to land, to become chargeable to the funds provided for the relief of the poor, the Harbour Master or other officer as aforesaid, shall by notice in writing to be served on the master of the ship, or affixed to the mast thereof, forbid the landing of such person. Provided, that it shall be lawful for the Governor in Privy Council to make rules for the guidance of the Harbour Master or other officer aforesaid, in the execution of the duties imposed on him by this Law.

(2) The person named or described in such notice shall not land in any part of this colony, except some person resident in the colony and approved by the Colonial Secretary as sufficient, shall by deed, which may be in the form given in the schedule, covenant with the Governor of this colony and his successors in office to repay to the Governor of the colony and his successors in office, any charges which may within one year from the date of such deed be incurred by the Government or any Parochial Board in respect of such person forbidden to land as aforesaid. Such deed shall be exempt from Stamp Duty.

3. If any person forbidden to land as aforesaid, lands in this colony

(a) the ship by which such person arrived at this colony shall be subject to a maritime lien in favour of His Majesty the King, his heirs and successors for a sum of one hundred pounds in respect of each person forbidden to land as aforesaid, and the amount so charged may be sued for and recovered in the Colonial Court of Admiralty;

(b) the ship by which such person arrived at this colony may be detained by force, if necessary, by the Harbor Master or other officer as aforesaid, with the aid of the water police, or any member of the constabulary (who are hereby required to render assistance to the Harbour Master or other officer as aforesaid, when called upon), until payment of the lien aforesaid, or until arrested under process of the Colonial Court of Admiralty;

(c) The master of such ship shall be liable to a penalty not exceeding fifty pounds;

(d) the person forbidden to land as aforesaid, or any person who aids or assists him in landing, shall be liable to a penalty not

exceeding fifty pounds, and the person forbidden to land may be taken back on board such ship.

(4) All penalties under this section may be recovered in a summary manner before a Resident Magistrate, or two Justices of the Peace.

2. The master of any ship arriving at this colony shall answer all questions which the Harbour Master or other officer aforesaid shall put to him, and any master who shall either refuse to answer any such question, or who shall give an untrue answer thereto, shall be liable to a penalty not exceeding fifty pounds.

LUXEMBURG.

Law of December 30, 1893.[1]

Article 1. Every alien who has not been admitted to domicile and who intends to establish a residence in the Grand Duchy shall, within five days after his arrival, declare his intentions in this regard to the local authority of the community where he desires to settle.

In case of a change of residence a new declaration shall be made within the same period to the local authority of the community wherein the alien shall have established his new residence.

These declarations shall contain the names of all foreigners living in the establishment of the declarant or dwelling with him including his foreign servants.

A receipt shall be delivered to the interested party without cost.

Article 2. No persons shall, under the penalties provided by the present law, engage as domestics, or workmen or receive as lodgers aliens who shall not have given proof that they have made the declaration prescribed by showing the receipt provided by Article 1.

Article 3. The declaration prescribed by Article 1 shall contain facts necessary to establish and verify the civil status, the antecedents and means of existence of the foreigner and other persons mentioned in the declaration.

[1] See Ruppert, penal code and code of criminal procedure, and special laws and police regulations in force in the Grand Duchy of Luxemburg (Luxemburg 1900), p. 465 et seq.

They shall be immediately transmitted to the court by the authority of the agent empowered to receive them.

* * * *

Article 5. Entrance into the Grand Duchy may be denied a foreigner who is known to be dangerous or to be likely to compromise the public safety and tranquility. Such aliens may be refused the right to settle in the country as may aliens who do not present papers of legitimation or who have not sufficient means of support for themselves and their families.

Article 6. A non-resident alien found to be a vagabond or a beggar or to be violating the law dealing with those the exercise of whose profession takes them from place to place in any of the frontier provinces, and an alien to whom admission into the country has been refused in accordance with article 5 paragraph 1 shall be at once conducted to the frontier by the police.

Non-resident aliens who shall be found in the Grand Duchy in bodies of three or more and who are vagabonds or mendicants or who are here in violation of the law dealing with ambulatory professions, can likewise be conducted direct to the frontier by the police.

Article 7. An alien residing in the Grand Duchy who by his conduct shall compromise the public order or tranquility, or who has been convicted or whose apprehension is sought in a foreign country for a crime or misdemeanor giving rise to extradition in accordance with the law or treaties on the subject, may be obliged to leave a given place, to live in a given place, or even to be sent out or expelled from the Grand Duchy in the absence of a demand for his extradition.

The following persons are likewise subject to expulsion: (1) foreigners who shall continue to live in the country after they shall have been duly notified that the establishment of a residence in the Grand Duchy has been denied them; (2) those who, after having been sent back or conducted to the frontier as provided in article 6, shall return to the country within two years; (3) those who shall have failed to conform to the conditions under which they may reside here imposed by the first paragraph of the present article.

Article 8. The alien who is one of those entitled to make the

declaration provided by articles 9 and 10 of the civil code,[1] article 10 of the Constitution[2] and the first and only article of the supplementary law of February 5, 1890[3] is not subject to expulsion before the expiration of the period of option.

Article 9. The measures provided by article 5 of the present law are to be taken by the Government and those provided by article 7, after consideration in Government Council by the officer in charge of the general police service.

There shall be no appeal from these orders.

Orders of expulsion shall be communicated to the aliens concerned by the marshal when directed to do so by the Procureur General. The cost of these acts of notification shall be paid for by the police appropriation.

Orders issued under article 5 shall be transmitted to those concerned by the administrative branch.

Article 10. The order of expulsion shall state the period within which the person expelled shall leave the country.

Aliens who have been expelled and who shall be at that time in custody may be conducted to the frontier at the expiration of such custody.

Article 11. The individual expelled in accordance with article 9 shall have the right to designate the frontier by which he intends to leave the country.

In default of such designation by him the frontier shall be designated officially by the Procureur General.

[1] Article 9. Any person born in Luxemburg of foreign parentage may in the year following his majority claim the status of a Luxembourgeois; provided that in case he resides in Luxemburg he shall declare his intention to fix his domicile there and in case he resides in a foreign country he announces his intention to fix his domicile in Luxemburg and establishes it therein during the year following the act of such announcement.

Article 10. A child born abroad being the child of a Luxemburgeois who shall have lost his status as such shall be able to recover it by executing the formalities provided in article 9.

[2] Constitution of October 17, 1868. Article 10: Naturalization granted the father is communicated to his minor child if the latter declares within two years after having obtained his majority his desire to take advantage of this privilege.

[3] Law of February 5, 1890: Article 10 of the Civil Code is to be interpreted to mean "that it is applicable to a child born of a mother whose country of origin is Luxemburg and who shall have lost her status as a citizen of Luxemburg."

Any person who has been expelled and who shall be found within the country after the expiration of the period within which he has been ordered to leave it, shall be conducted to the frontier by the police.

Article 12. The following persons shall be punished with a fine of from ten to twenty-five francs: (1) the foreigner who shall have failed within the time prescribed to make the declaration provided by article 1, or who shall have made it in an incomplete manner with regard to the provisions of article 3, or who shall have refused to produce his receipt when first asked to do so; (2) those who shall have neglected to furnish within the time prescribed the extract provided by article 4 or who shall have produced it in incomplete form with regard to the provisions of article 555 of the penal code; (3) those who shall have received as servants, workmen or lodgers, aliens who have not been furnished with a receipt showing that they have made the declaration provided by article 1.

Articles 565 and 566 of the penal code[1] are applicable to violations of the present article.

In case the offender is a recidivist, the court shall have power to impose in addition to the fine an imprisonment not exceeding twelve days.

Article 13. Aliens who aside from their declarations of residence shall have knowingly given proper authorities false statements regarding their civil status, their place of birth or that of their last residence, or the civil status, place of birth or last residence of other persons included in the declaration shall be punished with a fine of from twenty-six to three hundred francs and imprisonment from eight days to three months.

Article 14. Aliens who have been expelled and who shall reenter the Grand Duchy without prior authorization, shall be punished with imprisonment of fifteen days to six months and a fine of from fifty to five hundred francs.

At the expiration of their sentence they shall be conducted to the frontier.

[1] Article 565 provides that a person is a recidivist (akin to our "habitual criminal") when he shall have been convicted of the same offence during the twelve months preceding.

MEXICO.

Law of December 22, 1908.

Immigration.

Chapter 1. General provisions.

Article 1. Aliens coming to the Republic shall be allowed to enter only

I. by the seaports

II. by frontier towns authorized by international commerce or specially designated by the executive power.

Article 2. Any alien who desires to enter the National territory shall be subjected to an examination in order to determine his admissibility under the present law. * * * * * *

Article 3. Aliens included in the following classes shall not have the right to enter:

I. Those suffering from bubonic plague, cholera, yellow fever, cerebro-spinal meningitis, typhoid fever, exanthematic (ulcerous) typhoid, erysipelis, scarlet fever, scarletina, small-pox, dyptheria, or any other dangerous malady held to be contagious by an official declaration of the executive authority;

II. Those afflicted with tuberculosis, leprosy, beriberi, trachoma, Egyptian itch, or any other chronic disease adjudged contagious by an official declaration of the executive authority.

III. Epileptics and those mentally afflicted;

IV. The aged, those afflicted with ricketts, the infirm, lame, maimed, humpbacks, paralytics, those suffering with blindness or in any way disabled, those suffering from some physical or mental infirmity as the result of which they are incapacitatel for the performance of physical labor, and are therefore likely to become public charges.

V. Children of less than sixteen years of age unaccompanied by another passenger, or who have not been confided to the care of a person residing in the country who shall take them in charge;

VI. Fugitives from justice and those who have been convicted of a crime which if committed in violation of the laws of Mexico is punishable with imprisonment of more than two years except crimes purely political or military;

VII. Persons belonging to anarchistic societies, or who pub-

lish, support and profess the doctrine of the overthrow of governments by violence or the assassination of public officials.

VIII. Beggars or persons depending in any way for their living on public charity;

IX. Prostitutes and persons who attempt to import them into the country for purposes of prostitution or for the purpose of gaining a livelihood at their expense.

Article 4. Foreigners included in subdivisions II, III and IV of the preceding article may enter the country and remain there if specially authorized to do so by the Executive Power on the condition of furnishing a bond which the latter may deem sufficient to guarantee under the circumstances that they will support themselves at their own expense; that they will keep themselves isolated in an appropriate place or that they will not become public charges.

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Article 7. When a foreigner shall have entered after this law shall have gone into effect and in violation of its provisions the government may order that he be sent back to the country whence he came if he shall not have resided in the Republic for more than three years, and that he be placed in detention. The vehicle of expulsion shall be the railroad or the ship belonging to the company which brought him to the country and, in case this is not possible, some other ship or railroad at the expense of the said company.

Article 8. The Executive Power may suspend, under circumstances which may seem fitting in such case, the expulsion of an alien who shall have entered in violation of this law if in its opinion it shall be necessary to take his testimony in a criminal case.

Article 9. Navigation companies and immigration associations shall be financially liable for violation of this law committed by their agents and employees; consequently when the commander of a vessel or the surgeon shall refuse to pay the fines imposed the execution thereof shall be made upon the property of the company which is responsible. * * * * * * * * *

Chapter II. Arrival of Passengers by Sea.

Article 12. Upon the arrival of a vessel bringing passengers

for debarkation upon the territory of the Republic, the following rules shall be observed:

I. The master of the vessel shall present to the inspector of immigration lists made out in duplicate of all the passengers inscribed in numerical order containing the names, Christian names, sex, age, civil status, nationality, race, office or occupation, grade of education, the last foreign residence, the port of embarkation and the destination in this country of each. * * * *

II. The lists shall clearly show what passengers are sick, and shall indicate the nature of their disease under the acknowledgment of the ship's surgeon who, together with the master, shall sign the same and certify to the correctness of the information contained therein.

III. Each passenger shall have a card to be given him by the master of the vessel setting forth his full name, and his number on the list in order that he may be easily identified.

IV. The master shall likewise state on the lists all the information which he may possess with regard to the passengers relative to whether or not some of them should not be admitted to the territory of the Republic.

V. Each passenger shall undergo a medical examination to determine whether or not he is suffering with some illness or if there is some disability justifying his expulsion.

The master of a vessel who shall violate any one of the provisions of this article or who shall fail to set forth on the lists the true condition of the persons above mentioned in any one of the cases provided by article 3, shall be punished administratively by the infliction of a fine of from one hundred to five hundred pesos. The same penalty shall be inflicted upon the ship's surgeon who shall have made out and signed false declarations.

Article 13. Debarkation shall take place at precisely the place and hour fixed by the inspector of immigration and all the precautions prescribed for the purpose of avoiding disorder or the admission of persons to whom this right is refused shall be observed.

A debarkation which shall take place at a place and hour other than those fixed by the inspector shall be considered unlawful, and all persons who shall have been landed shall be forthwith put back on board. Moreover, the master of the vessel shall be punished with the infliction of a fine of one hundred to one thousand

pesos or imprisonment (of six months) or both as the court shall determine.

Article 14. Arrangements at the sanitary station permitting it, passengers shall be received there when the vessel arrives for the purpose of undergoing the necessary examinations and to decide their admissibility and the measures to be adopted with regard to them in conformity with this law.

Passengers whom it is not seen fit to admit shall be immediately sent back on board.

If the arrangements at the sanitary station are insufficient, the examinations shall take place on board ship.

Article 15. Passengers who, at the time of their arrival, shall be found suffering from one of the contagious diseases mentioned in paragraph I of article 3 shall be isolated in the hospital of the port until cured. The costs of assistance and treatment shall be at the expense of the passengers themselves and if they are devoid of resources, of the company which shall have brought them. * *

Article 16. Aliens who at the time of their arrival shall be found to be afflicted with one of the contagious diseases mentioned in paragraph 2 of article 3 shall not be allowed to disembark without having obtained a special permit from the Executive Power in conformity with Article 4.

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Article 18. If an alien succeeds in landing while afflicted with one of the diseases mentioned in paragraph 2 of article 3 or who is subject to exclusion under paragraphs 3 to 9 of said article, his reembarkation on the same vessel which brought him shall be immediately ordered, or, if the vessel has left, on the vessel of the same company next sailing for the country whence he came, or upon any other having this destination if the company has no vessel sailing for such port within the period of a month. * * * * * * * *

Article 19. The master of a vessel who shall refuse to carry out the order of reembarkation of foreigners shall be punished administratively with a fine of from five to five hundred pesos and the vessel shall not be allowed to depart until the order is carried out. The company shall pay a fine equal to that imposed upon the master and the foreigner shall be sent back at its expense on some other vessel. If the ship which has brought for-

eigners who are ordered to be expelled has already sailed, the order of reembarkation shall be issued to the company which has transported them. * * * * *

Chapter 3. Immigrant Laborers and Immigration Enterprises.

Article 20. For the purposes of the present law those foreigners who come to the Republic for the purpose of definitely taking up manual labor shall be considered immigrant laborers. Persons who form part of the family of an immigrant laborer are included within this term.

The provisions of this chapter and the preceding chapter shall apply to the entry of immigrant laborers.

Article 21. When immigrant laborers arrive in a number greater than ten on the same ship, they shall be denied admission except at the ports designated for this purpose by the Executive Power.

Article 22. Navigation companies whose ships are exclusively used for the transportation of immigrant laborers or which are accustomed to bring more than ten on each trip shall:

I. Furnish their ships with apparatus and instruments necessary for bringing about a quick disinfection and destruction of pathogenic germs;

II. Always have on board each ship a ship's surgeon;

III. Provide at ports to which they bring immigrants, in case the government has no sanitary establishments of adequate facilities, establishments for the purpose of the isolation and examination of the immigrants and for the treatment of those who shall be found to be suffering from disease, and of sufficient size to provide for all of those whom they bring, conforming in all respects to the provisions and regulations issued by the executive power;

IV. Maintain and take complete charge, at their own expense, and for the period of time prescribed by the executive power, of the immigrants whom they shall have brought, during their detention in hospitals and other places of observation;

V. Return in their ships and at their expense immigrants who shall not have been admitted in conformity with this law and those who shall have been expelled on the ground of having unlawfully landed, provided that both classes shall have been imported on the ships of the company;

VI. Maintain in the city of Mexico, a representative clad with sufficient power to take up matters which may present themselves, and to answer for the responsibility assumed by the company, and another representative with similar powers in each port to which their ships shall bring immigrants;

VII. Furnish a good and sufficient bond in the discretion of the executive power guaranteeing the execution of the obligations imposed upon them by the present law and renew this bond whenever it shall be necessary to do so.

Article 23. Companies which shall fail to execute the obligation prescribed by paragraphs 1, 2 and 7, of the preceding article shall be required to do so by the executive power and if they shall not have carried out this order within the time prescribed no one of their ships transporting immigrants shall be admitted into Mexican ports. If a company fails to carry out the conditions prescribed by paragraphs 4 and 5 of the preceding article, the bond prescribed by paragraph 7 shall be required in the necessary sum; or, by the exercise of the economic coercive branch, the company shall be required to pay the sum due if the bond is not provided or is held insufficient.

Article 24. When a vessel shall bring a larger number of immigrants than the sanitary station of the Government can provide for in connection with the post established by the company, debarkation can only be authorized of the number which the station will contain; the others shall submit to the examination and if it is possible, to the period of observation or treatment on board the vessel itself.

When a vessel arrrives and there is no sanitary station available, or when it is impossible to make use of the station of another company for its immigrants and there is no government station at its disposal, the immigrants which have been brought shall remain on board and shall be examined on the ship and, if possible, shall be subjected there to the period of observation and treatment.

Article 25. Should a ship arrive bringing in any considerable quantities immigrant laborers coming under contract to perform labor in mining, industrial or farming enterprises, the executive power may permit their debarkation in ports other than those ordinarily designated for the admission of immigrants, all the

precautions adopted for this purpose by the executive power in order to insure the execution of this law being observed.

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Article 29. Immigrant laborers shall be subjected to a period of observation of about ten days should there be among their number diseased persons or persons suspected of being afflicted with any contagious disease, or should such disease have broken out on the voyage, and in general in every other case where the executive power shall prescribe such steps.

Article 30. If, during the period of observation it shall be found that any of the immigrants are excludable under article 3, they shall be reembarked as provided by article 18.

Article 31. Immigrants who are not vaccinated shall be vaccinated in the sanitary station.

Article 32. Sanitary stations belonging to immigration companies, together with the employees thereof, shall be subject to the orders and under the supervision of the sanitary officer of the port.

Article 33. The costs necessary for the maintenance of sanitary stations of immigration companies, their repair, their fittings, their use and their material, the up-keep of the immigrants, medical treatment and the expenses of a physician and of the necessary personnel shall be met by the company.

Chapter 4. Of the Admission of Travelers Entering by Land.

Article 34. The admission of travelers entering by land shall be governed by the following rules:

I. The examination prescribed by article 2 shall take place on board the train.

II. The inspector of immigration shall request of each passenger on information blanks the information required by paragraph 1 of article 12.

III. In order not to unduly retard passage of trains the agents shall be sent inside the car to examine passengers and to ask them for the necessary information.

IV. When travelers do not arrive by train they may be detained at the point of entry for a time sufficient to examine them and request the information prescribed by paragraph 1 of article 12.

V. Trains carrying immigrant laborers exclusively or in which there are more than thirty such passengers shall be stopped at the time of their entrance into National territory in order that the examination of the immigrants may take place at once and that the necessary information concerning them may be obtained.

VI. Aliens afflicted with contagious diseases shall be at once detained and they shall be permitted to enter only after furnishing the bond prescribed by article 4.

VII. Aliens suspected of being afflicted with a contagious disease shall be permitted to remain in a place accessible to entry in isolation and under observation provided that they guarantee the payment of their maintenance.

Travelers who shall make false declarations shall be punished administratively with a fine of from five to twenty-five pesos or shall be imprisoned from three to fifteen days.

Article 35. The inspector of immigration is empowered to designate the places and hours of arrival of travelers who do not come by railroad, and the hours of arrival of special trains of travelers.

An arrival which shall take place at a time and place not authorized shall be penalized; the conductors, mechanics, engineers, or other employees in charge of the train and those who have ordered its entrance shall be punished with a fine of one hundred to one thousand pesos, or imprisonment, or both, as the judge may direct.

If the mode of entry is not by railroad travelers who shall have entered unlawfully shall be punished with a fine of from ten to one hundred pesos or with imprisonment which may extend to ten months.

Chapter 5. Administrative Jurisdiction in Matters Touching Immigration.

Article 36. Everything relative to immigration shall be within the jurisdiction of the Minister of the Interior who shall administer the service through the following officers and bodies:

I. Inspectors of immigration who shall be assigned to the ports and frontier posts at which the entrance of passengers coming from abroad is authorized.

II. Auxiliary agents who, under the conditions prescribed by the regulations and decisions of the Executive and under the orders and authority of the appropriate inspector shall assist him in his work and perform the duties assigned to them.

III. Boards of immigration established in each place to which inspectors are assigned and composed of three persons specially designated or, if there is no special designation, of the health officer, the collector of customs or the chief of the customs division and another Federal employee agreed upon by the two foregoing.

Article 37. In places where there is no inspector of immigration the health officer shall fulfill the duties which belong to him.

Article 38. The decisions of inspectors regarding admission, exclusion, or expulsion shall be passed upon by the Board of Immigration at the request of the party himself, the master of the vessel or his co-signatory, or the representative of the company which shall have brought the passenger, or by the health officer.

Decisions shall be rendered in writing signed by the inspector or by the members of the Board rendering them.

Article 39. It shall be the duty of the inspectors of immigration to impose the administrative penalties prescribed by this law. Their decisions shall be reviewed by the Minister of the Interior who shall be empowered to affirm, reverse or modify them.

If the penalties are pecuniary, their immediate payment shall be required and the amount shall be deposited pending their review by the Minister.

If the penalty is imprisonment, the guilty party shall be immediately detained and the Minister of the Interior shall be informed thereof by telegram.

Chapter 6 Criminal jurisdiction as Applicable to this Law.

Article 40. The Federal tribunals shall have the power to take jurisdiction of all cases of violation of this law.

Article 41. In places where there is no district judge the judges of general jurisdiction shall, with the aid of the Federal justice, take charge of the preliminary proceedings and shall be empowered to issue the formal order of imprisonment and, with the authorization of the competent Federal tribunal, take the proper steps to render the case justiciable. For this purpose and

in every case they shall notify the judge of the proper district whenever they shall assume jurisdiction of a case of this nature.

NATAL.

Coolie Law (Summary).

The law creates the office of Protector of Indian immigrants. Before leaving India every immigrant is required to contract to serve some Natal employer or be allotted to serve by the Protector. The periods of service shall be five years; and nine hours a day.

Regulations.

Any immigrant found a mile or more from the residence of his employer without a permit is liable to arrest unless on his way to lodge a complaint with the Protector. The Protector may order his return to his employer and if he declines to return he is subject to fine and imprisonment. For ingress, egress and general intercourse in the state an immigrant must have an official pass.

Restrictions on Immigrants.

An immigrant guilty of disobedience, fraud, deception, adultery, seduction, abduction, gross insolence, damage to property, neglect of work, absence without permission, mistreatment of live stock or dereliction in the discharge of other lawful duties to his employer or the state will be subject to fine and imprisonment. At the expiration of the term of indenture every Indian immigrant and his children attaining a contractual age must either return to India, enter a new indenture, or secure official license, at a cost of one pound sterling, to remain in the Colony.

Restrictions on Employers.

Any employer failing or neglecting to provide for the health, comfort and wages, of indentured immigrants, or their necessities in event of illness or infirmity; or failing to discharge his full duty by them; or who is guilty of mistreating such immigrants shall be liable to fine and imprisonment. Any person harboring immigrants to whose services he is not entitled, obstructing officials in discharge of their duty, sending or taking immigrants

out of the colony, or inducing them to leave is amenable to the law. No person is permitted to employ an unindentured immigrant unless he has a license to remain.

Rights and Exemptions.

During indenture immigrants are exempt from levy upon their wages or goods and from imprisonment for debt. Upon the term of indenture being completed or cancelled immigrants are entitled to a certificate of discharge from the Protector and to come within the law relating to Master and Servants.

An Act of Natal to "Place Closer Restrictions on Immigration".

For public safety and security Natal forbids admission into the life of the state of any person defined by law as a "prohibited immigrant." This includes persons unable, by reason of deficiency of education, to draft an application for admission in some European language; persons insane or idiotic; persons without visible means of support and likely to become a pauper or public charge; persons afflicted with a loathsome or dangerous contagious disease; persons convicted, sentenced and unpardoned of treason, murder or other crime involving moral turpitude and imprisonment; persons guilty of prostitution or of participating in the proceeds of prostitution; and persons deemed undesirable by reason of reliable official information received.

Penalty.

A prohibited immigrant found within Natal without a pass will be deemed to have contravened the law and will be liable upon conviction, to six months' imprisonment with hard labor and expulsion. If admitted under a misapprehension and sufficient evidence is adduced within a year to establish his status he may be adjudged a prohibited immigrant who is amenable to the law.

Alternative.

A person appearing to be a "prohibited immigrant" may be admitted upon depositing one hundred pounds sterling and by securing within a week an official certificate of exemption from this law. Failing to obtain a certificate his deposit will be subject to forfeiture and he will become subject to the general provisions of law.

Disabilities.

Prohibited immigrants will not be permitted to pursue a vocation, work at a trade, exercise the franchise, acquire property or enjoy other civil rights.

Deportation.

Destitute persons refused admission shall be returned to a port in or near their own country and provided with sufficient money for a month's subsistence after landing.

Persons of Unsound Mind.

Any person instrumental in bringing an insane or idiotic person to Natal without official authority is liable for the cost of his maintenance while in the Colony in addition to any other penalty.

Passes.

A prohibited immigrant may be granted passes for the purpose of a temporary visit or of embarking at a port for some other country. He must satisfy the officials of the integrity of his intention by answering all inquiries and depositing ten pounds sterling as a guaranty. The maximum limit of a "visiting" pass is six weeks and that of embarkation extends to the earliest available opportunity to exit for destination stated in the pass. Deposits are returnable before he leaves the state. The penalty for failure to observe in good faith the limitations on passes works a forfeiture of the deposit and other prescribed punishment.

Contraventions.

Any person will be deemed a violator of this law who assists any prohibited immigrant to enter Natal, who aids or abets in any contravention of this statute, who resists or obstructs the execution of this law, or who wilfully disobeys or disregards any lawful order or regulation under the act.

THE NETHERLANDS.

Law of August 13, 1849. (Regulating the admission and expulsion of Aliens.)[1]

Article 1. All foreigners who have sufficient means of sub-

[1] See Tripels, Policital Code for the Netherlands, Maestricht, 1889.

sistence or who are capable of acquiring them by work shall be admitted into the Netherlands in the methods provided by the four articles next following.

Article 2. Admission shall be granted on a foreign or regular passport. Passports are regular when they are:

(a) issued by the government of the country to which the foreigner belongs, or in the name of that government;

(b) Viséed for the journey by a diplomatic or consular representative of The Netherlands accredited to that government;

(c) not prescribed.

Article 3. The possession of other letters of safe conduct shall likewise give rise to lawful admission provided that it is set out therein who the holder is, whence he comes, and for what purpose he visits the country.

Article 4. Foreigners may even be admitted by merely presenting themselves for admission and furnishing information of their identity, whence they come, and for what purpose they seek to enter the country.

Proof of identification signed by two or more persons who are known to the police may be required in these cases.

Articles 5. Permission to enter may be granted by the Chief of Police of the district at places on the border and at the place of first arrival, and by granting a passport for the purposes of travel and sojourn in return for the deposit of the passport or other letters of safe conduct which the alien may present, or without such deposit.

Article 6. Passports for the purposes of travel and sojourn shall be valid for three months. This period can be extended by the Chief of Police at the place where the foreigner presents himself.

The extension of these passports can only be refused through failure to fulfill the conditions required by article 1.

When the appropriate police officer shall be of opinion that the extension of the passport issued for purposes of travel and sojourn should not be granted, he shall at once submit his refusal to the consideration of the judge of the district for further action as provided by article 11.

Article 7. Foreigners shall be required to exhibit their passports issued for the purposes of travel and sojourn, their foreign passports or other letters of safe conduct in their possession to

the police or the owners of the houses in which they take up their lodgings, should such exhibition be required.

Article 8. Foreigners who are found within the country without passports for the purposes of travel or sojourn shall have an opportunity to obtain such passport from the Chief of Police of the district in which they may be by observing the rules established for the admission of incoming aliens.

Article 9. Foreigners who have not been admitted and who have not been able to obtain a passport issued for purposes of travel or sojourn shall, if they are found within the country, be conducted across the frontier.

Article 10. Foreigners who have been admitted shall only be expelled by virtue of an order of the judge of the district of the place where they are staying or upon Our order.

Article 11. The judge of the district can only issue an order of expulsion in case the conditions set out in article 1 have not been complied with, and after having granted the foreigner a hearing, or after he shall have been duly cited before him.

A record shall be kept of such hearing.

If the foreigner makes no appearance, mention of this fact shall be made in the order of expulsion.

The reason for the expulsion shall be contained in said order.

The district judge shall send a copy of the proceedings and of the order of expulsion to Our commissioner in the province.

We reserve the right to annul the order of expulsion or its execution.

It shall nevertheless be executory in spite of an appeal taken to Ourselves or to the High Court as provided by article 20.

Article 12. A foreigner who shall prove to be a menace to the public safety shall be subject to expulsion at Our order.

Any foreigner whose expulsion We have ordered shall be forced to leave the Kingdom within a fortnight after the receipt of such order.

During this time he shall be entitled to the right of appeal granted by article 20 of the present law and pending the same may be held in custody.

If he does not take advantage of this right or if the High Court shall find his grounds of appeal to be unfounded, the order of expulsion shall be executed immediately.

If possible he shall be sent out at any point of the frontier which he may indicate.

Article 13. We reserve the right to select for foreigners who may constitute a menace to the public safety, a designated place in the Kingdom where they shall reside, or to forbid them to take up their residence in certain parts of the Kingdom.

The Royal orders to which this article and article 12 refer shall be communicated to the Chambers of the States General.

Article 14. Foreigners who within five years after the rendition of the order of expulsion by a district judge shall be again found within the country without being able to show that they have been allowed to enter, shall be punished by imprisonment of from eight days to three months.

Article 15. Foreigners who in defiance of an order of expulsion issued by Us shall return to the Netherlands without said order having been annulled, shall be punished with imprisonment of from three to six months.

In cases provided by this and the preceding article those sentenced shall be expelled after having served their sentence.

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Article 19. The provisions of the present law shall not apply to foreigners who, in conformity with article 8 of the Civil Code, shall have taken the status of Netherlanders and who shall be conconsidered *nationals* for the effect of the present law, or to a resident foreigner who is married to or shall have been married to a woman who is a Netherland subject by whom he shall have had one or more children born in the Netherlands.

Article 20. All those who may have been subjected to the operation of this law and who may claim to be natives of the Netherlands or that they come within the exceptions of the preceding article may, but on these grounds only, appeal to the High Court as provided by article 12, and in that case the delay provided in that article shall be granted in order that they shall be given the opportunity to show that this law is not applicable to their case.

The High Court shall have jurisdiction of these questions and its decision rendered after hearing de officio shall be final.

NEW ZEALAND.

(Summary).

"An Act to Place certain Restrictions on Immigration into New Zealand."

A law was enacted by the government of New Zealand, in 1899, designed to exclude undesirable immigrants and to elevate the standards of accession to the civic life of the state. The Act provides that it shall be unlawful for any persons included within the meaning of "prohibited immigrant" to land in the territory of New Zealand.

Prohibited Immigrants.

A "prohibited immigrant" is defined to be an idiot or insane person; any person afflicted with a dangerous or loathsome contagious disease; any person arriving in New Zealand within two years after the termination of any imprisonment for an offense, not of a political nature, punishable in New Zealand by death or imprisonment for two or more years, and to whom no pardon was granted; or any person unwilling or unable, and failing to write and sign in any European language an application for admission in the prescribed form, provided he shall have the right of final appeal to a Stipendiary, or salaried Magistrate.

Exceptions.

Any person not diseased, criminal, insane or an idiot appearing to be a prohibited immigrant may lawfully land on condition that he deposit in advance, with an agent of the Government, the sum of one hundred pounds sterling, and obtain, within 14 days, an official certificate of exemption from the prohibition of the law. Upon specific compliance with these regulations the deposit will be refunded, but failing to do so the deposit will be forfeited to the state as payment of the fine for landing as a prohibited immigrant.

Penalty.

Every prohibited immigrant unlawfully landing in New Zealand is liable to a penalty of one hundred pounds, removal from the state and detention in prison or custody of not over six

months, pending removal. Upon payment of 100 pounds or upon securing two sureties of fifty pounds each that he will leave the state within one month, he will be released from detention.

Liability.

If prohibited immigrants are trans-shipped from one vessel to another for the purpose of bringing them to New Zealand both vessels will be liable to the prescribed penalty, and all vessels may be detained in port until penalties are satisfied.

Rights after Conviction.

Upon conviction of any prohibited immigrant and a fine being decreed, the Court may order the time of payment extended to a period of three months with sufficient security.

Removal.

For the removal of such immigrant his passage to the nearest port of his own country or to his original home may be contracted for; and if destitute, sufficient money shall be supplied him for maintenance thirty days after the end of his voyage.

Third Persons.

Every person is liable to a penalty of not over one hundred pounds who wilfully assists in any evasion or contravention of the law. And in addition to other penalties any person wilfully assisting an idiot or insane person to enter New Zealand shall be liable for the cost of maintenance of such person while in the State.

Chinese.

A special act governs Chinese exclusion. Chinamen leaving New Zealand after registering their name and thumb print with the Collector of Customs may return within four years by satisfying the officials of their identity.

ROUMANIA.

Law of April 7, 1881. (For the expulsion of suspicious foreigners.)[1]

Article 1. A foreigner with his domicile and residence in Roumania who, by his actions, shall, during his stay in the

[1] See Annuaire de législation étrangère de 1881, p. 707.

country compromise the domestic safety of the State, disturb the public tranquility or take part in movements having for their purpose the overthrow of social or political order, whether in this country or abroad, shall be forced by the Government to leave the place where he is situated to reside in a locality specially designated, or even to leave the country.

Article 2. The ministerial order of expulsion issued by the council of ministers or the order by which a foreigner is directed to take up a particular place of residence or to change his actual residence shall be communicated to him administratively and the grounds therefor shall not be given. There shall be stated therein the period within which the alien shall act upon the order of expulsion or change of residence and this period shall not be less than twenty-four hours.

Article 3. On receipt of the order of expulsion the foreigner shall designate the point of the frontier by which he desires to leave the country, and in such case he shall be given an itinerary in which the stages of his journey, which he shall adhere to, shall be laid down, as well as the time within which he may remain in each locality until reaching the frontier.

In case of violation of any one of these provisions the foreigner shall be escorted out of the country by the police.

Article 4. The government may likewise order the expulsion of a foreigner who shall have left the town or locality where he shall have been specifically ordered to take up his abode.

Article 5. A foreigner who, subsequent to his expulsion from the country, shall reenter Roumanian territory, shall be immediately arrested and sentenced to imprisonment of from five days to six months. At the expiration of his sentence he shall be conducted to the frontier without being allowed the privilege of designating the point by which he wishes to leave the country.

Article 6. A foreigner who has just entered the country and who has not a domicile, or fixed place of residence, shall, within ten days of his arrival, and after the promulgation of the present law, obtain a letter of free sojourn from the police or the local authority to cover the time during which he desires to remain or travel in the country. * * * * * *

Article 7. An attack against the person of the Head of a foreign State or against the members of his family, when this

attack constitutes homicide, assassination, or poisoning, shall not be considered a political crime, or as an act akin to such a crime.

RUSSIA.

Law of May 26, 1903. (*Regarding the Expulsion of Foreigners.*)[1]

Section I.

Article 1. The expulsion of foreigners residing in Russia, together with an express provision against their return, shall issue from the Minister of the Interior with the exception of cases specially provided for by law. In the case of orders issued by Governors General the expulsion shall take place on the order of the Minister of War or of the Governor General. In the provinces and frontier districts the Governors may be empowered to issue orders of expulsion upon request submitted to His Majesty the Emperor through the Committee of Ministers.

Article 2. Foreigners sentenced to hard labor or transportation are not subject to expulsion. Foreigners sentenced to any other penalty which may deprive them of their liberty can only be expelled after having served their entire sentence.

Article 3. Foreigners subject to expulsion (art. 1) shall leave Russia within the time set forth in the order of expulsion; upon failure to do so they shall be escorted to the frontier and delivered to the foreign authorities at the frontier station.

Article 4. Foreigners who shall have failed to obey a warrant of expulsion as is the case with foreigners who have been expelled and who have voluntarily returned, are no longer subject to orders of expulsion; they shall be conducted to the frontier under escort and such as shall have returned voluntarily shall be sent back, after having served their sentence for having returned unlawfully.

Article 5. The Minister of the Interior may lend his aid and assistance to foreigners against whom orders of expulsion have been issued and who have not the necessary means to depart.

Article 6. Before expelling under escort the foreigner against whom a warrant and order of expulsion has been issued, the Minister of the Interior may, if he thinks fit, enter into communica-

[1] See Annuaire de législation étrangère 1903, p. 561.

tion through the department of Foreign Affairs with the foreign government in order that the latter may receive the foreigner who has been expelled.

Article 7. Where the frontier authorities shall have refused to receive the expelled foreigner, measures shall be taken with the respective foreign government in order that the foreigner who has been expelled may be received by it.

Article 8. Foreigners whose extradition has been requested by a foreign government on insufficient grounds, shall not be subject to expulsion under escort.

Article 9. Foreigners whose expulsion has not taken place (a) through their failure to leave Russia in cases where they are not subject to expulsion under escort (article 8); (b) through the refusal on the part of the frontier authorities to receive them in cases where expulsion shall have taken place prior to the preliminary *pourparlers* with the foreign government; (c) where the foreign government has refused to receive them, or where such government shall not have consented to do so within the period of one year from the opening of the *pourparlers,* such foreigners may, on the order of the Minister of the Interior, be interned in a locality specified for this purpose by a special regulation of the Committee of Ministers ratified by H. I. M. at the suggestion of the Minister of the Interior.

Article 10. Foreigners who shall have returned to Russia unlawfully after having been twice expelled shall be either expelled under military escort by order of the Minister of the Interior, or subjected to a forced residence in one of the localities to which article 9 refers.

Article 11. Foreigners subjected to forced residence by virtue of the aforesaid provisions (articles 9 and 10) shall be assigned by order of the local Governor to the agricultural or municipal districts; they shall be subjected to the surveillance of the police and shall not leave the district assigned to them.

Article 12. Foreigners subjected to forced residence shall pay the taxes and contributions imposed upon the rural or municipal classes in which they are incorporated. But in any event they shall not be free to take part in business or devote themselves to any particular industry even by paying the proper license, unless they are authorized to do so by the Government.

After the expiration of a period of five years dating from the

day of their assignment such foreigners may petition the authorities to become members of such rural or municipal class and to be fully admitted thereto with the consent of the Ministers of Finance and of the Interior after having become naturalized Russian subjects. From the time of such admission on such persons shall enjoy all rights with which members of such rural or municipal class are endowed, they shall be free from all police surveillance and shall be allowed to change their domicile in accordance with the precepts of the general law.

Article 13. Foreigners subjected to forced domicile, upon the refusal on the part of the country whence they come, or on the part of the foreign authorities at the frontier posts where they present themselves to receive them, cannot be expelled from Russia until the foreign government in question consents to receive them.

Article 14. The relatives and children of foreigners subjected to forced residence are authorized to accompany them at their own expense without undergoing the restrictions to which the former are subject.

Section II.

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Foreigners who shall come to Russia equipped with regular passports can only be expelled on the order of the competent authority. In the case of foreigners whose presence is not to be tolerated on account of their suspicious or reprehensible conduct or from any other cause, the Governors, in cases where they themselves lack the authority to apply the regulations regarding the expulsion of foreigners shall before proceeding to expel refer the matter to the Minister of the Interior or to the appropriate Governor-General in a given case.

Section III.

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Foreigners who shall have lost their nationality or shall not have the certificates required for their sojourn in Russia shall be permitted if they are not in a condition to prove their identity to obtain from the Governors with the authorization of the Minister of the Interior provisional certificates entitling them to remain the necessary length of time for them to become Russian subjects.

Section IV.

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The foreigner who shall arrive at the frontier without a passport duly issued shall be sent back by the local police authorities without any previous authorization to this effect being required from higher authority. This provision has no application to those residing on the frontier districts who cross the border without providing themselves with passports and for the purpose of carrying on their daily affairs.

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Section VII.

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A foreigner who has been lawfully expelled from Russia shall if he reenters without authority be subject:

To eight to sixteen months imprisonment and to the deprivation of certain rights and privileges mentioned in Article 50 of the Code of Criminal Punishments.

The punishment to be inflicted is by one degree more severe where the foreigner has been previously once convicted.

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Section XI.

The costs incident to expulsion or to the reconcentration of foreigners (Article 6 and 9 of the 1st section of the present law) shall be met from the year 1904 by an appropriation of 3,000 roubles credited to the budget of the Treasury; in 1903 these expenses shall be assigned to the credits of the budget of the Minister of the Interior for the maintenance of persons arrested and expelled by the military and police authority.

Section XII.

The Minister of the Interior shall draw up the form of (a), the order of expulsion informing the foreigner of the order to leave Russia with a statement of the consequences which will follow failure to observe this order; (b) the receipt certifying to the fact that this order has been presented, which shall be signed by the foreigner; and (c) the pass to the frontier issued to the foreigner who shall leave Russia in obedience to the foregoing order.

SOUTHERN RHODESIA.

Immigration Restriction Ordnance (Summary.)

To promote internal peace and order and to preserve high standards of health and citizenship the Colony adopted measures to restrict the admission of such aliens as would be an impediment to progress.

The laws exclude any person not provided with means of securing support; any person likely to become an object of charity; any person convicted of murder, rape, theft, fraud, perjury, forgery, robbery or arson when the circumstances of the offence render him undesirable; any person insane or idiotic; any person of unsound mind incapable of managing his own affairs; any person receiving any proceeds of prostitution; any person of deficient education incapable of drafting a satisfactory application for admission in some European language; and any person regarded as undesirable from official information transmitted by a British or South African Colony.

Exemptions.

The laws exempt the King's military and naval forces; accredited representatives of sovereign states; the wives and minor children of admitted immigrants; agricultural and domestic servants, skilled artisans, mechanics, workmen, or miners whom the officials deem eligible for admission; persons domiciled in South Africa; persons engaged to serve a resident employer of repute for a reasonable time at an adequate wage, provided that they are not laboring under prohibited disabilities except lack of means or education.

SWITZERLAND.

Canton of Geneva.

Law of October 14, 1905.[1]

CHAPTER I.

General Provisions.

Article 1. The administrative police power, insofar as concerns the sojourn and establishment of foreigners in the Canton

[1] See Annuaire de legislation etrangers 1905, p. 413.

is exercised by the department of Justice and Police under the authority and surveillance of the Council of State.

Article 2. Every person without distinction as to age, sex or condition not a native of the Canton of Geneva shall, if he wishes to reside there, ask for a permit of sojourn or settlement within eight days following his arrival. These permits shall be issued by the Departments of Justice and Police.

Article 3. Persons staying at an inn, a hotel or a *pension* and those who are the guests at houses of relatives or friends are not subject during the first three months of their stay to the obligation of taking out a permit; without prejudice however, to the regulations providing for the registration of travellers on the books of inns and *pensions* and to the observance of Art. 3 of the Law of July 16, 1881 providing for a Bureau of registration.

Article 4. Laborers of both sexes residing in the neighboring communities of the Canton who come for the purpose of undertaking agricultural work at stated periods are not obliged to take out the regular permit if the length of their stay is not to exceed six weeks.

Article 5. Persons not natives of the Canton who are called upon to make a short stay therein as well as those who are there for the purpose of obtaining regular papers shall be given a permit of provisionary sojourn upon filing a document of identity duly adjudged to be sufficient (birth certificate, certificate of baptism, of marriage, etc.)

The cost of this permit shall be fifty centimes per month.

Article 6. Every person not a native of the Canton shall obtain pending the deposit of the regular papers of legitimation showing his nationality and his right to return as well as that of his family, to his place of origin, a permit of sojourn or establishment as he may elect, subject to the provisions of the foregoing article.

Article 7. The following persons shall take out a permit of establishment (business permit):

A. He who, being domiciled in the Canton possesses landed property there;

B. He who carries on, on his own account, an industry or profession;

C. He who fulfills a public charge or function or who occupies a permanent position in a particular enterprise.

D. He who has a private establishment in the Canton.

E. He who after having enjoyed during his minority the benefits of a business permit issued to his parents shall come of age;

Article 8. The regular permit is issued in the form of a booklet the cost of which is twenty-five centimes. It shall contain a statement of the nature of the papers deposited and the period of their validity.

Article 9. The price of a permit of sojourn is fixed at one franc fifty per year for one person (without prejudice to the imposition of the hospital tax).

Article 10. The price of a permit of establishment (business permit) is six francs (without prejudice to the imposition of the hospital tax). Except as provided in Article 16 its period is not limited.

Article 11. The permit of establishment issued to the head of a family applies to his wife and minor children residing with him.

Article 12. A person furnished with a permit of sojourn or establishment is, whether unmarried, widowed, or divorced, obliged in case he marries to notify the Bureau of Permits of Sojourn or Establishment of his change of situation within one month following the day of his marriage.

Likewise within one month he shall inform the said Bureau of the birth of his children and cause such birth to be inscribed in his booklet.

Article 13. Each person provided with a permit of sojourn or establishment must in case of change of domicile and within a period of one month inform the Bureau of Permits of Sojourn of such change, and cause it to be inscribed upon his booklet.

Article 14. All persons subject to obtaining a permit of sojourn or establishment must present themselves to the authorities when requested to do so.

Article 15. In districts other than the City of Geneva permits are issued without expense to those entitled thereto through the municipal authorities in charge of registration for such purposes.

Article 16. All permits expire *ipso facto* on the day when the papers filed cease to be regular.

Article 17. The income from permits of sojourn and estab-

lishment is divided each year under the law regulating the budget between the state, the districts, and the general hospital service. Insofar as concerns the districts, distribution shall be made in proportion to the number of permits issued by each.

Article 18. In cases where a foreigner demanding a permit of sojourn or establishment cannot furnish regular papers or proof of the right of return in him and his family to the country of origin, the Department of Justice and Police may grant him a permit of sojourn or establishment under the following conditions:

Those seeking it shall establish their identity by producing a birth certificate, a marriage certificate, or other similar proof. They shall moreover deposit in the State Treasury either in securities or money one thousand francs for individuals and two thousand francs for a family. In exceptional cases the Council of State may reduce this sum to the fourth part thereof or even fail to require the deposit.

This deposit shall be paid back on return of the permit of sojourn or establishment in case of final departure of the depositor from the Canton, the deposit of regular papers, his decease, or his naturalization.

Chapter II.

Article 19. Subject to the provisions of Article 45 of the Federal Constitution with regard to the right of establishment of Swiss citizens in a Canton other than that of their origin, the police may refuse or revoke the permit of sojourn or establishment in the following cases:

(1) If the misconduct or dishonesty of the foreigner or his family justifies such a measure, or if his presence is obnoxious to the public weal;

(2) If the foreigner is not able to support himself or his family;

(3) If the papers on the production of which the sojourn shall have been authorized shall cease to be regular;

(4) Or if after having been granted his papers of sojourn or establishment, the Department of Justice or Police shall discover facts concerning the foreigner which, if discovered in time, would have justified the refusal of his papers;

(5) If he fails to carry out the obligations imposed upon him by the present law.

Article 20. The Council of State by virtue of its administrative power has always the right to expel from the Canton foreigners whose presence there may be injurious to the interests of the country or threaten the security of the state.

Article 21. Orders of expulsion shall contain the grounds therefor and the offences which give rise to it shall be specified in the order.

Chapter III.

Article 22. An appeal to the Council of State from every decision of the Department of Justice and Police involving a refusal or revocation of a permit of sojourn or establishment is available.

Article 23. These appeals are considered by a Commission of three Counsellors of State. It shall be the duty of this Commission to give the appellant a hearing and to report the same at a meeting of the Council.

The appellant shall be informed of the charges brought against him.

If he so requests he may introduce matters of defence at the hearing.

He shall be allowed to offer in evidence to the Commission all memorials, defences and explanations which he may judge useful to his cause.

Article 24. The effect of the appeal is to suspend the execution of the order. Nevertheless in cases of emergency the order of expulsion may be of a nature to be at once carried into execution; in this case it must be so stated by the head of the Department of Justice and Police on the original order as well as on the copy issued to the foreigner expelled. Where appeal is taken against an order which is to be executed at once, the appellant may be heard by a representative.

Chapter IV.

Article 25. Any person not a native of the Canton to whom a permit of sojourn has been finally refused and who shall still remain in the Canton or who shall reenter without the permission of the Department of Justice and Police shall be subject to a

penalty which may reach an imprisonment of fifteen days and a fine of fifty francs. Where the offender is a recidivist the penalties above set forth may be increased to double the amount of the maximum above mentioned.

Article 26. Nevertheless in the above mentioned case the President of the Department of Justice and Police may cause the offender to be conducted to the frontier without submitting him to a judicial trial.

Article 27. The following persons shall be subject to the imposition of a fine of not more than fifty francs:

(1) Any person not a native of the Canton provided with a permit of sojourn or establishment who shall change his domicile without making the declaration prescribed in Article 13 of the present law;

(2) Every person not a native of the Canton who shall dwell there without being provided with a permit of sojourn or establishment when such is required by law;

(3) Every person not a native of the Canton provided with a permit of sojourn who shall have failed to renew it within one month after its expiration;

(4) Every person not a native of the Canton provided with a permit of sojourn or establishment who shall not have caused it to be amended within the month following the day of his marriage or who within the same period shall not have announced the birth of his child.

Article 28. He who sublets a lodging to a person not a native of the Canton or who takes into his service such a person shall within fifteen days notify the Bureau of Permits of Sojourn if the said person shall not be provided with a permit of sojourn of establishment.

Inn-keepers and boarding house keepers who shall continue to lodge foreigners beyond the expiration of the term of three months are under the obligation of designating them to the Bureau of Permits of Sojourn if they are not provided with a permit of sojourn or of establishment.

He who shall have taken into his service a person to whom the provisions of Article 4 of the present law applies shall at the expiration of six weeks notify the Bureau of Permits of Sojourn if this person is not provided with a permit of sojourn or of establishment.

Those who offend these provisions are subject to a fine of not more than two francs for each month which shall have passed after such declaration should have been made, but such fine shall not exceed twenty-four francs.

Article 29. The Police Court shall have jurisdiction over the violations of the present law.

TRANSVAAL.

AN ACT

To place restriction on Immigration into this Colony to provide for the removal therefrom of prohibited immigrants and other persons and to establish and maintain an Immigration Department.

(*Assented to 15th August, 1907.*)

BE IT ENACTED by the King's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of the Transvaal as follows:—

1. The Peace Preservation Ordinance 1903 shall be and is hereby repealed; provided that no such repeal shall affect or abridge any powers or jurisdiction by the Asiatic Law Amendment Act of 1907 conferred for the purpose of carrying out such Act; but the said Ordinance shall for all the purposes of such Act be deemed to remain of full force and effect.

2. In this Act and in any regulation made thereunder unless inconsistent with the context:

"department" shall mean the Immigration Department established and maintained under the provisions of this Act;

"Governor" shall mean the officer for the time being administering the government of this Colony acting by and with the advice of the Executive Council;

"imprisonment" shall mean imprisonment with or without hard labor as the court sentencing an offender to imprisonment may direct;

"magistrate" shall include a resident magistrate and an assistant resident magistrate of any district of the Colony;

"Minister" shall mean the Colonial Secretary or such other Minister to whom the Governor may from time to time assign the carrying out of this Act;

"minor" shall mean any person under the age of sixteen years;

"police officer" shall mean any member of a police force lawfully established in this Colony;

"prohibited immigration" shall mean and include any of the following classes of persons desiring to enter or entering this Colony after the date of the taking effect of this Act;

(1) any person who when asked whether within or outside this Colony by a duly authorized officer shall be unable through deficient education to write out (from dictation or otherwise) and sign in the characters of a European language an application for permission to enter this Colony or or such other document as such officer may require; provided that for the purposes of this sub-section Yiddish shall be accepted as a European language; provided further that

(a) if the Minister publish a notice in the *Gazette* that arrangements have been made with the government of any country regulating the admission to this Colony of the subjects or citizens of such country, such subjects or citizens shall not while such notice is in force be required to comply with the provisions of this sub-section;

(b) the Minister shall not issue any such notice unless such arrangements have been sanctioned by resolution of both Houses of Parliament;

(c) any such notice shall cease to have effect as soon as it is cancelled by further notice of the Minister in the *Gazette.*

(2) Any person who has not in his possession or at his disposal means to support himself for a reasonable time wtihin this Colony or who is likely to become a public charge if he were allowed to enter therein;

(3) any prostitute or person living on the earnings of prostitution or procuring women for immoral purposes;

(4) any person who at the date of his entering or attempting to enter this Colony is subject or would if he entered this Colony be subject to the provisions of any law in force at such date which might render him liable either at such date or thereafter if found therein to be removed from or to be ordered to leave this Colony whether on conviction of an offence against such law or for failure to comply with

its provisions or otherwise in accordance with its provisions; provided that such conviction be not the result of the commission by such person elsewhere than in this Colony of an offence for which he has received a free pardon;

(5) any person who is a lunatic within the meaning of the Lunacy Proclamation 1902 or any amendment thereof;

(6) any person who is a leper or is suffering from such infectious or contagious disease of a loathsome or dangerous character as may from time to time be prescribed by regulation;

(7) any person who owing to information officially received by the Minister from any Secretary of State or from a member of any colonial government (whether British or foreign) or through diplomatic channels from an officer of any foreign state is deemed by the Minister to be an undesirable;

(8) any person who the Minister has reasonable grounds for believing would be dangerous to the peace order and good government of this Colony if he entered therein; but shall not include

(a) members of His Majesty's regular forces;

(b) the officers and crew of any public ship of a foreign state;

(c) any person who is duly accredited to this Colony by or under the authority of His Majesty or of the government of a foreign state together with his wife, family and servants;

(d) any person who has served in any of His Majesty's volunteer forces in South Africa and has received a good discharge and who does not come within the scope of subsections (3) (4) (5) (6) (7) or (8) of the definition of "prohibited immigrant";

(e) the wife or minor child of any person who is not a "prohibited immigrant";

(f) any European person who has been at any time lawfully resident within this Colony and who has not under the provisions of any law been removed from or ordered to leave this Colony;

(g) any Asiatic who is eligible for or has obtained a certificate of registration under the Asiatic Law Amendment

Act 1907 and who does not come within the scope of sub-sections (3) (4) (5) (6) (7) or (8) of the definition of "prohibited immigrant";

(h) descendants of the aboriginal races of Africa south of the Equator who do not come within the scope of sub-sections (3), (4), (5), (6), (7) or (8) of the definition of "prohibited immigrant";

(i) European persons who are agricultural or domestic servants, skilled artisans, mechanics, workmen or miners who are able to produce a certificate signed by the Agent-General of this Colony in England or by an officer in England or elsewhere appointed for the purpose by the Governor, to the effect that the person named therein has been engaged to serve immediately on arrival in this Colony an employer therein of repute at an adequate remuneration and for a reasonable period of time; provided that such persons do not come within the scope of any sub-section of the definition of "prohibited immigrant" other than sub-section (2).

"Regulation" shall mean any regulation made under section fifteen of this Act.

3. (1) The Governor may establish and maintain out of moneys voted by Parliament for the purpose a department to be known as the "Immigration Department" which shall be under the control of the Minister and in charge of such officer as he may from time to time appoint.

(2) The function of the department shall be the performance of all work whether within or outside this Colony necessary for or incidental to the prevention of the entrance into the Colony of prohibited immigrants or their removal therefrom and the carrying out of any powers or duties that may be specially conferred or imposed on it by this Act or by regulation.

(3) The Governor may from time to time appoint and remove such officers as he may think necessary or expedient to assist in the administration of the department who shall have such powers and perform such duties within or outside such Colony as may be conferred upon them by this Act or by regulation.

4. The Governor may from time to time enter into agreement with the government of any colony or territory in South Africa

for the doing of such acts or things as are necessary or expedient for the carrying out of the objects and purposes of this Act.

5. Every prohibited immigrant entering into or found within this Colony shall be guilty of an offence and shall be liable on conviction

(1) to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and

(2) to be removed at any time from the Colony by warrant under the hand of the Minister and pending such removal to be detained in such custody as may by regulation be proscribed; provided that

(a) such prohibited immigrant may be discharged from such detention if he find two approved sureties in this Colony (each in the sum of one hundred pounds) for his leaving the Colony within one month;

(b) if such prohibited immigrant be sentenced to imprisonment, such imprisonment shall terminate as soon as he is removed from the Colony.

6. Any person who

(a) is convicted after the date of the taking effect of this Act of a contravention of sections *three, thirteen* or *twenty-one* of the Immorality Ordinance 1903 or any amendment of such sections; or

(b) is deemed by the Minister on reasonable grounds to be dangerous to the peace order and good government of this Colony if he remain therein; or having been ordered under any law to leave this Colony fails to comply with the terms of such order;

may be arrested and removed from this Colony by warrant under the hand of the Minister and pending removal may be detained in such custody as may be prescribed by regulation; provided that no such person as in paragraph (b) hereof described shall be removed from this Colony except on the order of the Governor; provided further that every such person arrested shall be discharged from custody unless an order be made by the Governor for his removal from this Colony within ten days after the date of his arrest.

7. Any person who

(1) wilfully aids or abets a prohibited immigrant in entering or remaining in this Colony; or

(2) willfully aids or abets a person ordered to be removed under section *six* in remaining in this Colony; or

(3) enters into or purports to enter into a contract as employer with any person outside this Colony with intent that the provisions of this Act be evaded or at the time of entering into or purporting to enter into such contract shall be unable to fulfill his part thereof or has no reasonable expectation of being so able; or

(4) uses or attempts to use any certificate issued under paragraph (i) of the classes of persons excluded from the definition of "prohibited immigrant" unless he be the lawful holder of such certificate; or

(5) forges or uses, knowing the same to be forged, any document purporting to be such certificate

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one hundred pounds or in default of payment to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

8. No prohibited immigrant shall be entitled to obtain a license to carry on in this Colony any trade or calling or to acquire therein any interest in land whether leasehold, freehold or other interest; and any such license (if obtained) or any contract, deed or other document by which such interest is acquired in contravention of this section shall on conviction of such immigrant under section *five* of this Act be null and void.

9. Every person found in this Colony who is reasonably suspected of being a prohibited immigrant may be arrested without warrant by any magistrate, justice of the peace, police officer or officer of the department and shall as soon as possible be brought before a court of resident magistrate to be dealt with according to law.

10. No prohibited immigrant shall be exempt from the provisions of this Act or allowed to remain in this Colony by reason only that he had not been informed that he could not enter this Colony or that he may have been allowed to enter through oversight or owing to the fact being undiscovered that he was a prohibited immigrant.

11. Any person ordered to be removed from this Colony under this Act and any other person who shall have been convicted under section *seven* of aiding or abetting him in entering or remaining in the Colony in contravention to this Act shall be liable to pay all expenditure incurred by the government in carrying out such removal whether from the Colony or South Africa or in the detention within the Colony or elsewhere of any person pending his removal; and the amount of such expenditure on production to the Sheriff of the certificate of an officer of the department stating the items and total amount of such expenditure shall be recovered by execution on the property within the Colony of the person so liable in manner provided for execution levied under a judgment of the Supreme Court; and the proceeds of such execution shall be paid by the Sheriff to the Treasurer, who after deduction of the amount of expenditure aforesaid and the costs of execution, shall remit the balance to the person so liable or to any person appointed by him to receive the same.

12. (1) It shall be the duty of every keeper or person having the management of a place used as an hotel, boarding-house, lodging-house or other place wherein persons receive sleeping accomodation for money or valuable consideration to cause to be kept a book in which every person immediately he first receives such accomodation shall enter his name and place from which he last came.

(2) Every such book shall be opened to the inspection of any police officer or officer of the department at all reasonable times.

(3) Any person failing to comply with the requirements of this section or obstructing or preventing any such officer in carrying out his powers thereunder or making any false entry in such book shall be guilty of an offence and shall be liable on conviction to a fine not exceeding twenty pounds or in default of payment to imprisonment not exceeding one month or to both such fine and such imprisonment.

13. The burden of proving that a person has not entered or remained in this Colony in contravention of this Act or any regulation shall in any prosecution for such contravention lie upon the accused person.

14. Every court of resident magistrate shall have jurisdiction

to impose the maximum penalties for all contraventions of this Act or of any regulation.

15. The Governor may from time to time make, alter or rescind regulations not inconsistent with the provisions of this Act for all or any of the following purposes:—

(a) prescribing the powers and duties of officers of the department;

(b) for preventing the entrance of prohibited immigrants into this Colony;

(c) for the removal from this Colony of persons ordered under this Act to be removed therefrom;

(d) for the detention pending removal of persons ordered under this Act to be removed from the Colony;

(e) prescribing the diseases which are infectious or contagious for the purposes of sub-section (6) of the definition of "prohibited immigrant";

(f) prescribing the forms of

(i) the certificate mentioned in paragraph (i) of the classes of persons excluded from the definition of "prohibited immigrant";

(ii) the warrants to be issued by the Minister under sections *five* and *six;*

(iii) the book to be kept under section *twelve;*

(g) prescribing the conditions under which prohibited immigrants may be allowed to pass through this Colony while journeying to a place outside the same;

(h) generally for the better carrying out of the objects and purposes of this Act;

and may by any such regulations prescribe penalties for contraventions thereof not exceeding a fine of one hundred pounds or in default of payment imprisonment for a period not exceeding six months or both such fine and such imprisonment.

16. This Act may be cited for all purposes as the Immigrants Restriction Act 1907 and shall not take effect unless and until the Governor shall proclaim in the *Gazette* that it is His Majesty's pleasure not to disallow the same and thereafter it shall take effect upon such date as the Governor shall notify by proclamation.

Regulations for purposes of the Immigrants Restriction Act, 1907.

(*As amended by Government Notice No. 1289 of 1909*).

Regulations.

Interpretations of Terms.

1. In these Regulations, unless inconsistent with the context:
"Act" shall mean the Immigrants Restriction Act, 1907, and any amendment thereof;
"Chief Immigration Officer" shall mean the officer appointed by the Minister under sub-section (1) of section *three* of the Act to be in charge of the Immigration Department;
"Immigration officer" shall mean the Chief Immigration Officer and any other officer of the Immigration Department appointed under sub-section (3) of section *three* of the Act,
and any term defined for the purposes of the Act by section *two* thereof shall when used in these Regulations have the same meaning as is assigned to it for the purposes of the Act.

2. If any immigration officer or police officer shall become aware of any circumstances constituting reasonable grounds for suspecting that any person has entered the Colony who is a prohibited immigrant, or that any person has in any other manner contravened the Act or these Regulations, he shall forthwith notify such circumstances to the public prosecutor of his district, in order that all necessary legal proceedings may be taken against such person. Under section *nine* of the Act, an immigration officer or police officer may arrest without warrant any person found in this Colony who is reasonably suspected of being a prohibited immigrant and bring him, as soon as possible, before a court of resident magistrate, to be dealt with according to law.

3. (1) For the purpose of paragraph (2) of the definition of "prohibited immigrant" in the Act, the beneficial ownership of the sum of twenty pounds sterling by any person shall be deemed to support such person for a reasonable time in this Colony; the possession of a promise in writing from some employer of repute in this Colony of immediate employment of such person on his arrival therein shall be deemed sufficient to render

such person unlikely to become a public charge if he were allowed to enter this Colony.

(2) It shall be lawful for any immigration officer to demand from any person reasonably suspected of being a prohibited immigrant within the meaning of the said paragraph (2) evidence that he is the beneficial owner of such sum aforesaid; or that he is in possession of such promise in writing as aforesaid; and failure on the part of such person to furnish such evidence to such officer on demand shall be deemed to be circumstances constituting reasonable grounds for suspecting that he is a prohibited immigrant.

4. Any person who is reasonably suspected of being such prohibited immigrant as is described in paragraph (5) and (6) of the definition of prohibited immigrant in the Act may be detained by an immigration officer; such detention may be enforced at such place as to the immigration officer appears convenient, having regard to the particular circumstances, for the purpose of being medically examined for a period not exceeding twenty-for hours.

5. The diseases mentioned in this regulation shall be such infectious or contagious diseases as are described in paragraph (6) of the definition of "prohibited immigrant" in the Act, that is to say: leprosy, syphilis, plague, and smallpox.

6. Save as in regulation *four* is otherwise provided, any person detained in custody under any provision of the Act or these Regulations shall be detained at any police charge office or at any place at which persons under arrest are habitually placed while awaiting trial.

7. (1) Any person not being a prohibited immigrant who

(a) is desirous of entering this Colony for the first time; or

(b) has left or is leaving this Colony and is desirous of re-entering the same

and who has reason to believe that on entering or re-entering or attempting to enter or re-enter he may be suspected of being a prohibited immigrant and thereby be subjected to inconvenience may apply to the Chief Immigration Officer or to an immigration officer stationed in the province of Mozambique or in any Colony or Territory adjoining this Colony for the issue of a passport.

(2) Any such officer aforesaid may, in his absolute discretion, issue or refuse such passport, and if he shall issue it may make the same valid on or after a date to be named and for a period to be specified therein, provided that

(a) such person shall have furnished him with his signature in English in formed handwriting, and, upon demand made, the impressions of his fingers and thumbs;

(b) such person shall have paid a fee of two shillings and sixpence.

(3) The holder of such passport shall not part with the possession of the same except upon the demand of an immigration officer, and shall surrender such passport upon demand to an immigration officer on entering the Colony or to the Chief Immigration Officer at Pretoria, and even if such passport be not so surrendered it shall be deemed after the holder has entered the Colony, or after the expiry of the date named on the passport, to be invalid for all purposes whatsoever.

(4) Upon the surrender of such passport any such officer aforesaid may require the person in possession of the same to satisfy him as to his identity with the person to whom it was issued.

(5) A refusal by such holder to surrender such passport or a failure on such surrender so to satisfy the immigration officer as to identity shall be deemed circumstances constituting reasonable grounds for suspecting that the holder or surrenderer is a prohibited immigrant.

(6) Every such passport shall be in the form set forth in Schedule A hereto.

8. (1) Whenever a prohibited immigrant journeying to a place outside this Colony desires, in order to reach such place with greater celerity or convenience, to pass through this Colony he may apply to the Chief Immigration Officer for a travelling permit, and such officer may issue the same to such person; provided

(a) he is satisfied of the bona fides of the applicant; and

(b) the applicant furnishes the impressions of all his fingers and thumbs;

(c) the applicant pays a fee of one pound for such permit and deposits such sum not exceeding ten pounds as the said officer may require.

Such permit shall be issued upon the condition that the holder thereof shall not remain in the Transvaal after a day and hour to be named therein.

(2) At the border station or other place of departure from the Transvaal he shall surrender such permit to the immigration officer thereat, and if he shall have satisfied such officer of his identity and that he has complied with the condition of such permit, a refund shall be made to him by such officer of the amount paid as aforesaid by way of deposit upon his giving a receipt therefor. If the holder of such permit shall fail to comply with such requirement and condition such deposit shall be forfeited to the Treasury.

(3) Every such permit shall be in the form set forth in Schedule B hereto.

9. The Chief Immigration Officer, on being satisfied that any person who is a prohibited immigrant desires to enter or pass through this Colony for the purpose of pursuing or defending any proceedings, civil or criminal, in any court of law in this Colony or elsewhere, or because he has been summoned by legal process as a witness at any such proceedings or because his presence is necessary or expedient on any matter or urgency, shall issue to such person, free of charge, a temporary permit in the form set forth in Schedule C hereto, authorising him to enter and remain in the Colony for such period and at such place as may be specified therein; no such permit shall be issued unless the applicant therefor furnish to an immigration officer his signature in English in formed handwriting, and, upon demand made, the impressions of his fingers and thumbs; and it shall be a condition of such permit that it be produced on demand to an immigration officer on entering the Colony, or to the Chief Immigration Officer at Pretoria, and that the holder thereof shall satisfy any such officer of his identity with the person to whom it was issued. On or before the date or expiry of period named in such permit the holder shall surrender the same to the immigration officer at the place of departure from this Colony, and, even if it be not surrendered on or before such date, it shall be deemed after such date invalid for all purposes whatsoever.

10. The certificate to be given to any European person (being an agricultural or domestic servant, skilled artisan, mechanic, workman, or miner) to the effect that he is engaged to serve immediately on arrival in this Colony an employer of repute at an adequate remuneration and for a reasonable period of time shall be in the form set forth in Schedule D hereto. No such certificate shall be granted unless the person in whose favour the same is issued shall furnish to the Agent-General in England or other person elsewhere appointed by the Governor to issue such certificate the impressions of all his fingers and thumbs, and it shall be the duty of the holder of such certificate to produce the same on demand to an immigration officer, and if required to satisfy such officer as to his identity with the person to whom such certificate was issued.

11. Whenever a prohibited immigrant convicted under section five of the Act has been sentenced to be detained pending removal from the Colony, and is authorised to be discharged from such detention, the two approved sureties for his leaving the Colony shall execute a bond on the form set forth in Schedule E to these Regulations; such sureties shall be persons approved by the Minister or by the Chief Immigration Officer.

12. (1) If at any time any certificate, permit, or passport mentioned in these Regulations is lost or destroyed, the person who was the lawful holder thereof shall apply to the Chief Immigration Officer at Pretoria for the issue to him of a duplicate of such certificate, permit, or passport; such officer on satisfying himself that such certificate, permit, or passport, has been lost or destroyed may, on payment of a fee of one pound, issue to the applicant such duplicate on compliance by him with the same conditions as by these Regulations were applicable in respect of the certificate, permit, or passport so lost or destroyed.

2. Any person who procures of attempts to procure any such duplicate of certificate, permit, or passport aforesaid knowing that the original thereof has not been lost or destroyed shall be guilty of an offence.

13. The Chief Immigration Officer may cancel any certificate passport or permit or duplicate thereof issued under the Act of these Regulations on being satisfied that the holder thereof has failed to comply with or committed a breach of the conditions thereof; and thereupon the holder of such certificate, passport

or permit or duplicate shall be deemed not to possess the same as from the date and hour when it was cancelled.

14. Any warrant which may be issued by the Minister under section *five* of the Act shall be in form set forth in Schedule F hereto and any warrant issued by the Minister under section *six* of the Act shall be in the form set forth in Schedule G hereto.

15. The book to be kept under section *twelve* of the Act by every keeper or person having the management of a place used as a hotel, boarding-house, or other place wherein persons receive sleeping accomodation for money or valuable consideration shall be in the form set forth in Schedule H hereto.

16. Any fee payable under these Regulations in respect of any passport or permit shall be noted by means of Transvaal revenue stamps, which shall be affixed to such passport or permit and defaced in manner prescribed by law by the immigration officer to whom such fee is paid.

17. Any person who forges or uses, knowing the same to be forged, any passport or permit issued under these Regulations shall be guilty of an offence.

18. Any person who shall resist or wilfully obstruct or aid or incite any other person to resist or wilfully obstruct an immigration officer in the execution of his powers or duties under these Regulations shall be guilty of an offence.

19. Any person who shall fail to comply with any provision of these Regulations, or otherwise commit an offence thereunder shall, on conviction, in addition to any other penalty to which he may be liable for an offence under the Act, be liable to a fine not exceeding one hundred pounds, or, in default of payment, to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

TRINIDAD, WEST INDIES.

Immigration Ordinance (Summary).

The laws governing immigration into this Colony chiefly contemplate the indenture and colonization of immigrants for service on the plantations devoted to fruit culture. Therefore detailed supervision of the reciprocal relations between employer and employed is provided for in order to insure justice to all concerned.

An immigrant is defined to mean "any person introduced into the Colony either wholly or in part at the expense of the immigration fund, and his children while he is under indenture."

Restrictions.

No infirm person, pauper or destitute immigrant, likely to become a public charge, shall be permitted to land unless some responsible resident gives bond to indemnify the government against any expense that may be incurred, within a year, in behalf of each immigrant. Or unless the immigrant shall deposit with the immigration officer the sum of one hundred dollars as a guaranty.

No alien criminal or person otherwise vicious shall be permitted to land.

Penalties.

For every prohibited person who lands the vessel bringing him shall be liable for a maritime lien of five hundred dollars. The master of any vessel who allows any prohibited person to land, the person who lands, and any one who knowingly causes such a person to be landed shall be liable to a penalty of two hundred and fifty dollars.

General Provisions.

An indenture means a contract for service between an immigrant and an employer registered under this Ordinance. Employers are required to apply to the government for the allotment of immigrants procured by the Colony or for authority to introduce them at private expense.

On arrival immigrants are provided for at the expense of the Colony until allotted to an employer.

Every employer is required to provide suitable and comfortable dwellings and other needful comforts for the indentured immigrants; and to furnish adequate supplies to maintain the immigrant in health. And he is held responsible for the welfare and protection of all immigrants indentured to him.

The immigrants are required to perform faithfully their duties under the contract.

They may lodge any complaint against their employer with the Protector of Immigrants who is authorized to investigate and punish offenses committed against the immigrants.

URUGUAY.

Decree of December 10, 1894.

* * * * * *

Article 1. The following are excludable immigrants, in accordance with article 26 of the Law on the subject: (1) Persons suffering from a contagious disease; (2) beggars; (3) persons who by reason of some organic vice or physical defect are absolutely worthless for laboring purposes; (4) persons more than sixty years of age.

Article 2. In accordance with article 27 of the same Law Asiatics, Africans and persons generally described as Gypsies or Bohemians are also excludable immigrants.

Article 3. The persons described in the preceding articles coming as second or third class passengers from the Republics of Paraguay and the Argentine shall not land in the ports of the Republic. This prohibition extends to such persons who shall arrive as third class passengers at a port of the Republic coming from Brazil or any other foreign port.

* * * * * *

Article 6. The Inspector of Disembarkation shall personally examine suspicious persons and whenever such persons are found to be included in the excludable classes shall prohibit their disembarkation and at once notify the Captain to return them, without prejudice to proceedings thereafter as provided by article 10.

Decree of October 3, 1902 *regarding the Admission of Immigrants.*

* * * * * *

Article 2. In order that some of the immigrants referred to in article 27 of the Law as Asiatics, Africans and persons generally known as Gypsies or Bohemians may be admitted into the ports of the Republic as passengers, they must show beyond a doubt that they have come to South America as first class passengers from their country of origin or from the Continent of Europe.

* * * * * *

VENEZUELA.

Law of April 16, 1903.

Article 1. Aliens while within the territory of the United States of Venezuela shall enjoy the same civil rights as Venezuelans as is declared by the Constitution of the Republic.

Article 2. Aliens within the territory of the United States of Venezuela are to be classified as domiciled or transient aliens.

Article 3. The following shall be considered domiciled aliens:

(1) Those who shall have acquired a domicile in conformity with the provisions of the civil code;

(2) Those who of their own free will and accord and not being vested with a diplomatic character shall have continuously resided in the country for more than two years;

(3) Those who shall possess landed property within the limits of the republic for more than two years, and shall carry on any business or industry there, provided that they shall maintain a permanent establishment; and even though they are vested with a consular character.

Article 4. Those persons are considered transient aliens who shall be found within the territory of the republic and who are not included in any one of the paragraphs of the preceding article.

* * * * * *

Article 6. Domiciled or transient aliens shall not in any way take part in the political affairs of the Republic in any connection whatsoever. Consequently they shall not:

(1) Be members of political associations;

(2) Collaborate in political publications or write articles bearing on the internal or external politics of the country for any publication;

(3) Assume public offices or employments;

(4) Take up arms in the internal conflicts of the Republic;

(5) Make speeches in any way relating to the politics of the country.

Article 7. Domiciled aliens who shall violate any one of the provisions contained in article 6 shall lose their status as aliens and shall become ipso facto subject to the responsibilities,

charges and obligations which the vicissitudes of politics may impose upon nationals.

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Article 9. Transient aliens who shall violate the provisions set out in artcle 6 shall be forthwith expelled from the territory of the Republic.

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Article 11. Neither resident nor transient aliens shall have the right to seek diplomatic remedies except when after having exhausted all local remedies it shall clearly appear that there has been a denial of justice, flagrant injustice or an obvious violation of the principles of international law.

Article 12. Aliens actually domiciled, those who for the future shall fix their domicile in the country and transient aliens not of a diplomatic character shall submit a statement before the first civil authority of the place where they are found, to the effect that they submit themselves completely to the provisions of the present law and to those of the decree of February 14, 1873, providing regulations regarding the manner in which aliens are to be indemnified in the proper case.

Those who shall fail to make this declaration shall be expelled from the country within a period of the extent of which they shall be informed by the national executive power.

* * * * * *

Article 20. Foreigners who shall come to the Republic for the purpose of being admitted in order to settle there shall present to the first civil authority of the place at which they arrive the necessary documents to establish their personal status and a certificate of good conduct issued by the authorities at their last domicile and legalized in due form.

APPENDIX B

LAWS RELATING TO THE ADMISSION OF CHINESE INTO THE UNITED STATES.[1]

Act of May 6, 1882, as amended and added to by Act of July 5, 1884.

(22 Stat., p. 58; 23 Stat., p. 115.)

AN ACT To amend an act entitled: "An act to execute certain treaty stipulations relating to Chinese, approved May sixth, eighteen hundred and eighty-two."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section one of the act entitled "An act to execute certain treaty stipulations relating to Chinese," approved May sixth, eighteen hundred and eighty-two, is hereby amended so as to read as follows:

"Whereas in the opinion of the Government of the United States the coming of Chinese laborers to this country endangers the good order of certain localities within the territory thereof: Therefore

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after the passage of this act, and until the expiration of ten years next after the passage of this act, the coming of Chinese laborers to the United States be, and the same is hereby suspended, and during such suspension it shall not be lawful for any Chinese laborer to come from any foreign port or place or having so come to remain within the United States."

Section two of said act is hereby amended so as to read as follows:

"SEC. 2. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer, from any foreign port or place, shall be deemed guilty of a mis-

[1] As issued by the Department of Commerce and Labor, April 15, 1912.

demeanor, and, on conviction thereof, shall be punished by a fine of not more than five hundred dollars for each and every such Chinese laborer so brought, and may also be imprisoned for a term not exceeding one year."

Section three of said act is hereby amended so as to read as follows:

"SEC. 3. That the two foregoing sections shall not apply to Chinese laborers who were in the United States on the seventeenth day of November, eighteen hundred and eighty, or who shall have come into the same before the expiration of ninety days next after the passage of the act to which this act is amendatory, nor shall said sections apply to Chinese laborers, who shall produce to such master before going on board such vessel, and shall produce to the collector of the port in the United States at which such vessel shall arrive, the evidence hereinafter in this act required of his being one of the laborers in this section mentioned; nor shall the two foregoing sections apply to the case of any master whose vessel, being bound to a port not within the United States, shall come within the jurisdiction of the United States by reason of being in distress or in stress of weather, or touching at any port of the United States on its voyage to any foreign port or place: *Provided*: That all Chinese laborers brought on such vessel shall not be permitted to land except in case of absolute necessity, and must depart with the vessel on leaving port."[2]

* * * * * *

"SEC. 6. That in order to the faithful execution of the provisions of this act, every Chinese person, other than a laborer, who may be entitled by said treaty or this act to come within the United States, and who shall be about to come to the United States, shall obtain the permission of and be identified as so entitled by the Chinese Government, or of such other foreign government of which at the time such Chinese person shall be a subject, in each case to be evidenced by a certificate issued by such Government, which certificate shall be in the English language, and shall show such permission, with the name of the permitted person in his or her proper signature, and which certificate shall state the individual, family, and tribal name in full, title, or of-

[2] Sections 4 and 5 have been superseded by the Act of September 13, 1888, and are therefore omitted.

ficial rank, if any, the age, height, and all physical peculiarities, former and present occupation or profession, when and where and how long pursued, and place of residence of the person to whom the certificate is issued, and that such person is entitled by this act to come within the United States.

"If the person so applying for a certificate shall be a merchant, said certificate shall, in addition to above requirements state the nature, character, and estimated value of the business carried on by him prior to and at the time of his application as aforesaid: *Provided,* That nothing in this act nor in said treaty shall be construed as embracing within the meaning of the word 'merchant,' hucksters, peddlers, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

"If the certificate be sought for the purpose of travel for curiosity, it shall also state whether the applicant intends to pass through or travel within the United States, together with his financial standing in the country from which such certificate is desired.

"The certificate provided for in this act, and the identity of the person named therein shall, before such person goes on board any vessel to proceed to the United States, be viséed by the indorsement of the diplomatic representative of the United States in the foreign country from which such certificate issues, or of the consular representative of the United States at the port or place from which the person named in the certificate is about to depart; and such diplomatic representative or consular representative whose indorsement is so required is hereby empowered, and it shall be his duty, before indorsing such certificate as aforesaid, to examine into the truth of the statements set forth in said certificate, and if he shall find upon examination that said or any of the statements therein contained are untrue it shall be his duty to refuse to indorse the same.

"Such certificate viséed as aforesaid shall be prima facie evidence of the facts set forth therein, and shall be produced to the Chinese inspector in charge of the port in the district in the United States at which the person named therein shall arrive, and afterward produced to the proper authorities of the United States whenever lawfully demanded, and shall be the sole evidence permissible on the part of the person so producing the

same to establish a right of entry into the United States; but said certificate may be controverted and the facts therein stated disproved by the United States authorities."

SEC. 7. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge any such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, shall be deemed guilty of a misdemeanor; and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars, and imprisoned in a penitentiary for a term of not more than five years.

Section eight of said act is hereby amended so as to read as follows:

"SEC. 8. That the master of any vessel arriving in the United States from any foreign port or place shall, at the same time he delivers a manifest of the cargo, and if there be no cargo, then at the time of making a report of the entry of the vessel pursuant to law, in addition to the other matter required to be reported, and before landing, or permitting to land, any Chinese passengers, deliver and report to the Chinese inspector in charge of the district in which such vessels shall have arrived a separate list of all Chinese passengers taken on board his vessel at any foreign port or place, and all such passengers on board the vessel at that time. Such list shall show the names of such passengers (and if accredited officers of the Chinese or of any other foreign Government, traveling on the business of that Government, or their servants, with a note of such facts), and the names and other particulars as shown by their respective certificates; and such list shall be sworn to by the master in the manner required by law in relation to the manifest of the cargo.

"Any refusal or willfull neglect of any such master to comply with the provisions of this section shall incur the same penalties and forfeiture as are provided for a refusal or neglect to report and deliver a manifest of the cargo."

SEC. 9. That before any Chinese passengers are landed from any such vessel, the Chinese inspector in charge, or his deputy, shall proceed to examine such passengers, comparing the certificates with the list and with the passengers; and no passenger shall be allowed to land in the United States from such vessel in violation of law.

Section ten of said act is hereby amended so as to read as follows:

"SEC. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found."

Section eleven of said act is hereby amended so as to read as follows:

"SEC. 11. That any person who shall knowingly bring into or cause to be brought into the United States by land, or who shall aid or abet the same, or aid or abet the landing in the United States from any vessel, of any Chinese person not lawfully entitled to enter the United States, shall be deemed guilty of a misdemeanor, and shall on conviction thereof, be fined in a sum not exceeding one thousand dollars, and imprisoned for a term not exceeding one year."

Section twelve of said act is hereby amended so as to read as follows:

"SEC. 12. That no Chinese person shall be permitted to enter the United States by land without producing to the proper Chinese inspector the certificate in this act required of Chinese persons seeking to land from a vessel.

"And any Chinese person found unlawfully within the United States shall be caused to be removed therefrom to the country from whence he came, and at the cost of the United States, after being brought before some justice, judge, or commissioner of a court of the United States and found to be one not lawfully entitled to be or to remain in the United States; and in all such cases the person who brought or aided in bringing such person to the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority as a marshal or United States marshal in reference to carrying out the provisions of this act or the act of which this is amendatory, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation to be audited and paid by the same officers.

"And the United States shall pay all costs and charges for

the maintenance and return of any Chinese person having the certificate prescribed by law as entitling such Chinese person to come into the United States who may not have been permitted to land from any vessel by reason of any of the provisions of this act."

Section thirteen of said act is hereby amended so as to read as follows:

"SEC. 13. That this act shall not apply to diplomatic and other officers of the Chinese or other Governments traveling upon the business of that Government, whose credentials shall be taken as equivalent to the certificate in this act mentioned, and shall exempt them and their body and household servants from the provisions of this act as to other Chinese persons."

SEC. 14. That hereafter no State court or court of the United States shall admit Chinese to citizenship; and all laws in conflict with this act are hereby repealed.

Section fifteen of said act is hereby amended so as to read as follows:

"SEC. 15. That the provisions of this act shall apply to all subjects of China and Chinese, whether subjects of China or any other foreign power; and the words Chinese laborers, wherever used in this act shall be construed to mean both skilled and unskilled laborers and Chinese employed in mining."

SEC. 16. That any violation of any of the provisions of this act, or of the act of which this is amendatory, the punishment of which is not otherwise herein provided for, shall be deemed a misdemeanor, and shall be punishable by fine not exceeding one thousand dollars, or by imprisonment for not more than one year, or both such fine and imprisonment.

SEC. 17. That nothing contained in this act shall be construed to affect any prosecution or other proceeding, criminal or civil, begun under the act of which this is amendatory; but such prosecution or other proceeding, criminal or civil, shall proceed as if this act had not been passed.

Approved, July 5, 1884.

Act of September 13, 1888.

(25 Stat., pp. 476-477.)

AN ACT To prohibit the coming of Chinese laborers to the United States.

* * * * * *

SEC. 5. That from and after the passage of this act, no Chinese laborer in the United States shall be permitted, after having left, to return thereto, except under the conditions stated in the following sections.

SEC. 6. That no Chinese laborer within the purview of the preceding section shall be permitted to return to the United States unless he has a lawful wife, child, or parent in the United States, or property therein of the value of one thousand dollars, or debts of like amount due him and pending settlement.

The marriage to such wife must have taken place at least a year prior to the application of the laborer for a permit to return to the United States, and must have been followed by the continuous cohabitation of the parties as man and wife.

If the right to return be claimed on the ground of property or of debts, it must appear that the property is bona fide and not colorably acquired for the purpose of evading this act, or that the debts are unascertained and unsettled, and not promissory notes or other similar acknowledgments of ascertained liability.

SEC. 7. That a Chinese person claiming the right to be permitted to leave the United States and return thereto on any of the grounds stated in the foregoing section, shall apply to the Chinese inspector in charge of the district from which he wishes to depart at least a month prior to the time of his departure, and shall make on oath before the said inspector a full statement descriptive of his family, or property, or debts, as the case may be, and shall furnish to said inspector such proofs of the facts entitling him to return as shall be required by the rules and regulations prescribed from time to time by the Secretary of Commerce and Labor, and for any false swearing in relation thereto he shall incur the penalties of perjury.

He shall also permit the Chinese inspector in charge to take a full description of his person, which description the collector shall retain and mark with a number.

And if the said inspector, after hearing the proofs and investigating all the circumstances of the case, shall decide to issue a certificate of return, he shall at such time and place as he may designate, sign and give to the person applying a certificate containing the number of the description last aforesaid, which shall be the sole evidence given to such person of his right to return.

If this last-named certificate be transferred, it shall become

void, and the person to whom it was given shall forfeit his right to return to the United States.

The right to return under the said certificate shall be limited to one year; but it may be extended for an additional period, not to exceed a year, in cases where, by reason of sickness or other cause of disability beyond his control, the holder thereof shall be rendered unable sooner to return, which facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer departs for the United States, and certified by such representative of the United States to the satisfaction of the Chinese inspector in charge at the port where such Chinese person shall seek to land in the United States, such certificate to be delivered by said representative to the master of the vessel on which he departs for the United States.

And no Chinese laborer shall be permitted to re-enter the United States without producing to the proper officer in charge at the port of such entry the return certificate herein required. A Chinese laborer possessing a certificate under this section shall be admitted to the United States only at the port from which he departed therefrom, and no Chinese person, except Chinese diplomatic or consular officers, and their attendants, shall be permitted to enter the United States except at the ports of San Francisco, Portland, Oregon, Boston, New York, New Orleans, Port Townsend, or such other ports as may be designated by the Secretary of Commerce and Labor.[1]

SEC. 8. That the Secretary of Commerce and Labor shall be, and he hereby is, authorized and empowered to make and prescribe, and from time to time to change and amend such rules and regulations, not in conflict with this act, as he may deem necessary and proper to conveniently secure to such Chinese persons as are provided for in articles second and third of the said treaty between the United States and the Empire of China, the rights therein mentioned, and such as shall also protect the United States against the coming and transit of persons not entitled to the benefit of the provisions of said article.

And he is hereby further authorized and empowered to prescribe the form and substance of certificates to be issued to Chinese laborers under and in pursuance of the provisions of

[1] The Secretary of the Treasury at the time the Act went into effect.

said articles, and prescribe the form of the record of such certificate and of the proceedings for issuing the same, and he may require the deposit, as a part of such record, of the photograph of the party to whom any such certificate shall be issued.

SEC. 9. That the master of any vessel who shall knowingly bring within the United States on such vessel, and land, or attempt to land, or permit to be landed any Chinese laborer or other Chinese person, in contravention of the provisions of this act, shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished with a fine of not less than five hundred dollars nor more than one thousand dollars, in the discretion of the court, for every Chinese laborer or other Chinese person so brought, and may also be imprisoned for a term of not less than one year, nor more than five years, in the discretion of the court.

SEC. 10. That the foregoing section shall not apply to the case of any master whose vessel shall come within the jurisdiction of the United States in distress or under stress of weather, or touching at any port of the United States on its voyage to any foreign port or place. But Chinese laborers or persons on such vessel shall not be permitted to land, except in case of necessity, and must depart with the vessel on leaving port.

SEC. 11. That any person who shall knowingly and falsely alter or substitute any name for the name written in any certificate herein required, or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate any person named in any such certificate, and any person other than the one to whom a certificate was issued who shall falsely present any such certificate, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars and imprisoned in a penitentiary for a term of not more than five years.

* * * * * * *

SEC. 13. That any Chinese person, or person of Chinese descent, found unlawfully in the United States, or its Territories, may be arrested upon a warrant issued upon a complaint, under oath, filed by any party on behalf of the United States, by any justice, judge, or commissioner of any United States court, returnable before any justice, judge, or commissioner of a United

States court, or before any United States court, and when convicted, upon a hearing, and found and adjudged to be one not lawfully entitled to be or remain in the United States, such person shall be removed from the United States to the country whence he came.

But any such Chinese person convicted before a commissioner of a United States court may, within ten days from such conviction, appeal to the judge of the district court for the district.

A certified copy of the judgment shall be the process upon which said removal shall be made, and it may be executed by the marshal of the district, or any officer having authority of a marshal under the provisions of this section.

And in all such cases the person who brought or aided in bringing such person into the United States shall be liable to the Government of the United States for all necessary expenses incurred in such investigation and removal; and all peace officers of the several States and Territories of the United States are hereby invested with the same authority in reference to carrying out the provisions of this act, as a marshal or deputy marshal of the United States, and shall be entitled to like compensation, to be audited and paid by the same officers.

SEC. 14. That the preceding sections shall not apply to Chinese diplomatic or consular officers or their attendants, who shall be admitted to the United States under special instructions of the Department of Commerce and Labor, without production of other evidence than that of personal identity.

Approved, September 13, 1888.

Act of May 5, 1892.[1]

(27 Stat., p. 25.)

AN ACT To prohibit the coming of Chinese persons into the United States.

* * * * * *

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all laws now in force prohibiting and regulating the coming into this country of Chinese persons and persons of Chinese descent are hereby continued in force for a period of ten years from the passage of this act.

SEC. 2. That any Chinese person or person of Chinese descent,

[1] The Act of October 1, 1888, (25 Stat., p. 504), was repealed by the Treaty of 1894, 21 Op. Atty. Gen. 68; hence its omission.

when convicted and adjudged under any of said laws to be not lawfully entitled to be or remain in the United States, shall be removed from the United States to China, unless he or they shall make it appear to the justice, judge, or commissioner before whom he or they are tried that he or they are subjects or citizens of some other country, in which case he or they shall be removed from the United States to such country: *Provided,* That in any case where such other country of which such Chinese person shall claim to be a citizen or subject shall demand any tax as a condition of the removal of such person to that country, he or she shall be removed to China.

SEC. 3. That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof to the satisfaction of such justice, or commissioner, his lawful right to remain in the United States.

SEC. 4. That any such Chinese person or person of Chinese descent convicted and adjudged to be not lawfully entitled to be or remain in the United States shall be imprisoned at hard labor for a period of not exceeding one year and thereafter removed from the United States, as hereinbefore provided.[2]

SEC. 5. That after the passage of this act, on an application to any judge or court of the United States in the first instance for a writ of habeas corpus, by a Chinese person seeking to land in the United States, to whom that privilege has been denied, no bail shall be allowed, and such application shall be heard and determined promptly without unnecessary delay.

SEC. 6.[3] And it shall be the duty of all Chinese laborers within the limits of the United States at the time of the passage of this act, and who are entitled to remain in the United States, to apply to the collector of internal revenue of their respective districts, within one year after the passage of this act, for a certificate of residence, and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act, or who, after one year from the passage hereof, shall be found within the jurisdiction of the United States without such certificate of residence, shall be

[2] This provision is void; see 163 U. S., 228.

[3] Amended by Act of November 3, 1893. See post.

deemed and adjudged to be unlawfully within the United States, and may be arrested by any United State customs official, collector of internal revenue, or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as hereinbefore provided, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness or other unavoidable cause, he has been unable to procure his certificate, and to the satisfaction of the court, and by at least one credible white witness, that he was a resident of the United States at the time of the passage of this act; and if upon the hearing it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court.

And any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge.

SEC. 6. [as amended by section 1 of the act of November 3, 1893]. And it shall be the duty of all Chinese laborers within the limits of the United States who were entitled to remain in the United States before the passage of the act to which this is an amendment to apply to the collector of internal revenue of their respective districts within six months after the passage of this act for a certificate of residence; and any Chinese laborer within the limits of the United States who shall neglect, fail, or refuse to comply with the provisions of this act and the act to which this is an amendment, or who, after the expiration of said six months, shall be found within the jurisdiction of the United States without such certificate of residence, shall be deemed and adjudged to be unlawfully within the United States, and may be arrested by any United States custom official, collector of internal revenue or his deputies, United States marshal or his deputies, and taken before a United States judge, whose duty it shall be to order that he be deported from the United States, as

provided in this act and in the act to which this is an amendment, unless he shall establish clearly to the satisfaction of said judge that by reason of accident, sickness, or other unavoidable cause he has been unable to procure his certificate, and to the satisfaction of said United States judge, and by at least one credible witness other than Chinese, that he was a resident of the United States on the fifth of May, eighteen hundred and ninety-two; and if, upon the hearing, it shall appear that he is so entitled to a certificate, it shall be granted upon his paying the cost.

Should it appear that said Chinaman had procured a certificate which has been lost or destroyed, he shall be detained and judgment suspended a reasonable time to enable him to procure a duplicate from the officer granting it, and in such cases the cost of said arrest and trial shall be in the discretion of the court; and any Chinese person, other than a Chinese laborer, having a right to be and remain in the United States, desiring such certificate as evidence of such right, may apply for and receive the same without charge; and that no proceedings for a violation of the provisions of said section six of said act of May fifth, eighteen hundred and ninety-two, as originally enacted, shall hereafter be instituted, and that all proceedings for said violation now pending are hereby discontinued:

Provided, That no Chinese person heretofore convicted in any court of the States or Territories or of the United States of a felony shall be permitted to register under the provisions of this act; but all such persons who are now subject to deportation for failure or refusal to comply with the act to which this is an amendment shall be deported from the United States as in said act and in this act provided, upon any appropriate proceedings now pending or which may be hereafter instituted.

SEC. 7. That immediately after the passage of this act, the Secretary of Commerce and Labor[4] shall make such rules and regulations as may be necessary for the efficient execution of this act, and shall prescribe the necessary forms and furnish the necessary blanks to enable collectors of internal revenue to issue the certificates required hereby, and make such provisions that certificates may be procured in localities convenient to the applicants.

[4] The Secretary of the Treasury at the time the Act went into effect.

Such certificates shall be issued without charge to the applicant, and shall contain the name, age, local residence and occupation of the applicant, and such other description of the applicant as shall be prescribed by the Secretary of Commerce and Labor, and a duplicate thereof shall be filed in the office of the collector of internal revenue for the district within which such Chinaman makes application.

SEC. 8. That any person who shall knowingly and falsely alter or substitute any name for the name written in such certificate or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely impersonate any person named in such certificate, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars or imprisoned in the penitentiary for a term of not more than five years.

* * * * * *

Approved, May 5, 1892.

Act of November 3, 1893.

(28 Stat., p. 7.)

AN ACT To amend an act entitled "An act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two.

[Section 1 reenacted, with amendments, section 6 of the Act of May 5, 1892, and the amended section is printed with the Act of May 5, 1892, ante.]

SEC. 2. The words "laborer" or "laborers," wherever used in this act, or in the act to which this is an amendment, shall be construed to mean both skilled and unskilled manual laborers, including Chinese employed in mining, fishing, huckstering, peddling, laundrymen, or those engaged in taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term "merchant," as employed herein and in the acts of which this is amendatory, shall have the following meaning and none other: A merchant is a person engaged in buying and selling merchandise, at a fixed place of business, which business is conducted in his name, and who during the time he claims to be engaged as a merchant, does not engage in the performance

of any manual labor, except such as is necessary in the conduct of his business as such merchant.

Where an application is made by a Chinaman for entrance into the United States on the ground that he was formerly engaged in this country as a merchant, he shall establish by the testimony of two credible witnesses other than Chinese the fact that he conducted such business as hereinbefore defined for at least one year before his departure from the United States, and that during such year he was not engaged in the performance of any manual labor, except such as was necessary in the conduct of his business as such merchant, and in default of such proof shall be refused landing.

Such order of deportation shall be executed by the United States marshal of the district within which such order is made, and he shall execute the same with all convenient dispatch; and pending the execution of such order such Chinese person shall remain in the custody of the United States marshal, and shall not be admitted to bail.

The certificate herein provided for shall contain the photograph of the applicant, together with his name local residence and occupation, and a copy of such certificate, with a duplicate of such photograph attached, shall be filed in the office of the United States collector of internal revenue of the district in which such Chinaman makes application.

Such photographs in duplicate shall be furnished by each applicant in such form as may be prescribed by the Secretary of Commerce and Labor.[1]

Approved, November 3, 1893.

Joint Resolution of July 7, 1898.

(30 Stat., p. 751.)

* * * There shall be no further immigration of Chinese into the Hawaiian Islands, except upon such conditions as are now or may hereafter be allowed by the laws of the United States; and no Chinese, by reason of anything herein contained, shall be allowed to enter the United States from the Hawaiian Islands.

[1] Secretary of the Treasury when the Act went into effect.

Act of April 30, 1900.

(31 Stat., pp. 141-161.)

AN ACT To provide a government for the Territory of Hawaii.

SEC. 4. That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii.

* * * * * *

SEC. 101. That Chinese in the Hawaiian Islands when this act takes effect may within one year thereafter obtain certificates of residence as required by "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, as amended by an Act approved November third, eighteen hundred and ninety-three, entitled "An Act to amend an Act entitled 'An Act to prohibit the coming of Chinese persons into the United States,' approved May fifth, eighteen hundred and ninety-two," and until the expiration of said year shall not be deemed to be unlawfully in the United States if found therein without such certificates: *Provided, however,* That no Chinese laborer, whether he shall hold such certificate or not, shall be allowed to enter any State, Territory, or District of the United States from the Hawaiian Islands.

* * * * * *

Approved April 30, 1900.

Act of June 6, 1900.

(31 Stat., pp. 588-611.)

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and one, and for other purposes.

* * * and hereafter the Commissioner-General of Immigration, in addition to his other duties, shall have charge of the administration of the Chinese exclusion law and of the various acts regulating immigration into the United States, its Territories, and the District of Columbia, under the supervision and direction of the Secretary of Commerce and Labor.

* * * * * * * *

Approved, June 6, 1900.

Act of March 3, 1901.

(31 Stat., p. 1093.)

AN ACT Supplementary to an act entitled "An Act to prohibit the coming of Chinese persons into the United States," approved May fifth, eighteen hundred and ninety-two, and fixing the compensation of commissioners in such cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for the district attorney of the district in which any Chinese person may be arrested for being found unlawfully within the United States, or having unlawfully entered the United States, to designate the United States commissioner within such district before whom such Chinese person shall be taken for a hearing.

SEC. 2. That a United States commissioner shall be entitled to receive a fee of five dollars for hearing and deciding a case arising under the Chinese-exclusion laws.

SEC. 3. That no warrant of arrest for violations of the Chinese-exclusion laws shall be issued by the United States commissioners excepting upon the sworn complaint of a United States district attorney, assistant United States district attorney, collector, deputy collector, or inspector of customs, immigration inspector, United States marshal, or deputy United States marshal, or Chinese inspector, unless the issuing of such warrant of arrest shall first be approved or requested in writing by the United States district attorney of the district in which issued.

SEC. 4. That this act shall take effect immediately.

Approved, March 3, 1901.

Act of April 29, 1902, as Amended and Reenacted by Section 5 of the Deficiency Act of April 27, 1904.[1]

(32 Stat., part 1, p. 176; 33 Stat., pp. 394-428.)

AN ACT To prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia, of Chinese and persons of Chinese descent.

SECTION 1. All laws in force on the twenty-ninth day of April, nineteen hundred and two, regulating, suspending, or prohibiting the coming of Chinese persons or persons of Chinese descent into the United States, and the residence of such persons

[1] For explanation of effect of these acts, see 142 Fed., 128.

therein, including sections five, six, seven, eight, nine, ten, eleven, thirteen, and fourteen of the Act entitled "An Act to prohibit the coming of Chinese laborers into the United States," approved September thirteenth, eighteen hundred and eighty-eight, be, and the same are hereby, reenacted, extended, and continued, without modification, limitation, or condition; and said laws shall also apply to the island territory under the jurisdiction of the United States, and prohibit the immigration of Chinese laborers, not citizens of the United States, from such island territory to the mainland territory of the United States, whether in such island territory at the time of cession or not, and from one portion of the island territory of the United States to another portion of said island territory: *Provided, however,* That said laws shall not apply to the transit of Chinese laborers from one island to another island of the same group; and any islands within the jurisdiction of any State or the district of Alaska shall be considered a part of the mainland under this section.

SEC. 2. That the Secretary of Commerce and Labor[1] is hereby authorized and empowered to make and prescribe, and from time to time to change, such rules and regulations not inconsistent with the laws of the land as he may deem necessary and proper to execute the provisions of this Act and of the Acts here by extended and continued and of the treaty of December eighth, eighteen hundred and ninety-four, between the United States and China, and with the approval of the President to appoint such agents as he may deem necessary for the efficient execution of said treaty and said Acts.

SEC. 3. That nothing in the provisions of this act or any other act shall be construed to prevent, hinder, or restrict any foreign exhibitor, representative, or citizen of any foreign nation, or the holder, who is a citizen of any foreign nation, of any concession or privilege from any fair or exposition authorized by Act of Congress from bringing into the United States, under contract, such mechanics, artisans, agents, or other employees,

[1] By the Act of February 14, 1903, entitled "An Act to establish the Department of Commerce and Labor" (32 Stat., p. 825), the Commissioner-General of Immigration, the Bureau of Immigration, and the Immigration Service were transferred from the Treasury Department to the Department of Commerce and Labor.

natives of their respective foreign countries, as they or any of them may deem necessary for the purpose of making preparation for installing or conducting their exhibits or of preparing for installing or conducting any business authorized or permitted under or by virtue of or pertaining to any concession or privilege which may have been or may be granted by any said fair or exposition in connection with such exposition, under such rules and regulations as the Secretary of Commerce and Labor may prescribe, both as to the admission and return of such person or persons.

SEC. 4. That it shall be the duty of every Chinese laborer, other than a citizen, rightfully in, and entitled to remain in any of the insular territory of the United States (Hawaii excepted) at the time of the passage of this act, to obtain within one year thereafter a certificate of residence in the insular territory wherein he resides, which certificate shall entitle him to residence therein, and upon failure to obtain such certificate as herein provided he shall be deported from such insular territory; and the Philippine Commission is authorized and required to make all regulations and provisions necessary for the enforcement of this section in the Philippine Islands, including the form and substance of the certificate of residence so that the same shall clearly and sufficiently identify the holder thereof and enable officials to prevent fraud in the transfer of the same: *Provided, however,* That if said Philippine Commission shall find that it is impossible to complete the registration herein provided for within one year from the passage of this act, said Commission is hereby authorized and empowered to extend the time for such registration for a further period not exceeding one year.

Approved, April 29, 1902.

Act of February 20, 1907.

(34 Stat., part 1, pp. 898, 906.)

AN ACT to regulate the immigration of aliens into the United States.

* * * * * *

SEC. 25. * * * *Provided,* That in every case where an alien is excluded from admission into the United States, under any law or treaty now existing or hereafter made, the decision of the appropriate immigration officers, if adverse to the admis-

sion of such alien, shall be final, unless reversed on appeal to the Secretary of Commerce and Labor. * * *

* * * * * *

Executive Order of the Governor of the Philippine Islands.

GOVERNMENT OF THE PHILIPPINE ISLANDS,
EXECUTIVE BUREAU,
Manila, P. I., September 23, 1904.

EXECUTIVE ORDER
No. 38.

Whereas the Department of Commerce and Labor of the United States has, under date of July twenty-seventh, nineteen hundred and three, issued a certain rule to regulate the admission of Chinese persons from the Philippine Islands into the mainland territory of the United States and into the insular possessions of the United States other than the Philippine Islands, which said rule is as follows:

[Since the issuance of this order the rule mentioned has been amended; reference should therefore be had to Rule 11, p. 37.][3]

* * * * * *

And whereas it is the desire of the government of the Philippine Islands to afford to such eligible Chinese persons, residents of these islands, as desire to depart out of the same for other parts or possessions of the United States, the privilege so to do and to give evidence of such permission and of the status of each person so permitted in the manner now required by law in the case of Chinese persons departing out of a foreign country as nearly as may be: Now therefore,

* * * The collector of customs for the Philippine Islands is hereby designated to grant such permission in the name of the government of the Philippine Islands, to all such Chinese persons as shall have duly established to his satisfaction their eligibility under the law to enter the mainland territory of the United States, or any other of its insular possessions.

This permission and the prima facie establishment of the facts showing eligibility, shall be evidenced by a certificate signed and approved by him in analogy to the certificate required by section six of the Act of Congress of July fifth, eighteen hundred

[3] Here, *post.*

and eighty-four, and referred to in the rule above cited.

It is further ordered that in the case of Chinese persons coming from the other insular possessions of the United States to the Philippine Islands, bearing certificates issued in pursuance of the rule above mentioned, they shall be accorded at the ports of the Philippine Islands the same rights of entry as they would have did they come possessed of similar certificates issued by a foreign government.

LUKE E. WRIGHT,
Civil Governor.

APPENDIX C

REGULATIONS GOVERNING THE ADMISSION OF CHINESE[1]

NOTE.—For laws and regulations applying to the cases of aliens in general (including Chinese), see the pamphlet "Immigration Laws and Regulations of July 1, 1907."

For rules regarding the collection of statistics concerning aliens in general and Chinese, see same pamphlet, seventh edition.

The following rules are not enforced in the Philippine Islands by officers of the Department of Commerce and Labor, the Act of February 6, 1905 (33 Stat., pp. 689-692), prescribing that the United States immigration laws shall be administered in said islands by the officers of the general government thereof.

RULE 1. No Chinese person, other than a Chinese diplomat or consular officer and attendants, shall be permitted to enter the United States elsewhere than at the ports of San Francisco, Cal.; Portland, Oregon; Boston, Mass.; New York, N. Y.; New Orleans, La.; Port Townsend and Seattle, Wash.; Honolulu, Hawaii; San Juan and Ponce, P. R.; San Diego, Cal.; and Tampa, Fla.: *Provided, however,* That commencing with July 1, 1911, Chinese seeking admission or readmission to the United States from the Orient through Canada shall be examined under both the immigration and Chinese-exclusion laws at Vancouver, B. C., those there found admissible to be furnished with a certificate of identity, on which they shall be permitted to cross the Canadian boundary, on identification, at Sumas, Wash.; Portal, N. D.; Noyes, Minn.; Detroit, Mich.; Buffalo, N. Y.; Malone N. Y.; Richford, Vt.; Lowelltown, Me.; or Vanceboro, Me.; and Chinese seeking admission or readmission without having been preinvestigated, *from Canada,* shall be permitted to apply for examination to the United States immigration officials at Vancouver, B. C.; Winnipeg, Manitoba; or Montreal, Quebec, those there found admissible to be furnished with a certificate of identity and permitted to cross the Canadian boundary on identification at the boundary

[1] As issued by the Department of Commerce and Labor, April 15, 1912.

ports above mentioned, or at Island Pond, Vt., St. Albans, Vt., Rouses Point, N. Y., Suspension Bridge, N. Y., and Port Huron, Mich.; and Chinese seeking readmission from Canada and holding a return certificate issued after preinvestigation in accordance with Rule 13, 15, or 16, shall be permitted to reenter through any one of the said border ports upon identification at Vancouver, B. C.; Winnipeg, Manitoba; or Montreal, Quebec, as the rightful holder of the return certificate, and the surrendering of such certificate, such applicant to receive in lieu thereof a certificate of identity.

RULE 2. Only those Chinese persons who are expressly declared by the treaty and laws relating to the exclusion of Chinese to be admissible shall be allowed to enter the United States, and those only upon compliance with the requirements of said treaty and laws and of regulations issued thereunder. The admissible classes, therefore, are teachers; students; travelers for curiosity or pleasure; and merchants, and their lawful wives and minor children; officials of the Chinese Government, together with their body and household servants; Chinese persons holding the return certificate prescribed by Rules 13, 15, and 16; those seeking in good faith to pass through the country to foreign territory, as provided in Rules 17 and 18; persons whose physical condition necessitates immediate hospital treatment; Chinese persons shown to have been born in the United States, and the wives and children of such Chinese American citizens; and seamen as provided in Rule 7.

RULE 3. Chinese aliens shall be examined as to their right to admission to the United States under the provisions of the law regulating immigration as well as under the laws relating to the exclusion of Chinese. As the immigration act relates to aliens in general, the status of Chinese applying for admission must *first* be determined in accordance with the terms of that law and of the regulations drawn in pursuance thereof; then, if found admissible under such law and regulations, their status under the Chinese-exclusion laws and regulations shall be determined. In order to avoid inconvenience, delay, or annoyance to Chinese applicants arising through misunderstanding, and in the interest of good administration, examination under both sets of laws and regulations shall be made, in the order stated, only at the ports named and in the manner specified in Rule 1 hereof.

RULE 4. (*a*) Upon the arrival of Chinese persons at any inspection port mentioned in Rule 1 they shall be examined touching their right to admission, and those proving such right shall be promptly landed. *Provided,* That nothing contained in these regulations shall be construed to authorize the boarding of vessels of foreign navies arriving at ports of the United States for the purpose of enforcing the provisions of the Chinese-exclusion laws.

(*b*) The said examination shall be separate and apart from the public, in the presence of government officials and such other witnesses only as the officer in charge shall designate, except that, during so much of the examination as relates exclusively to applicant's status under the Chinese-exclusion laws, he shall be allowed to have counsel and an interpreter present to observe, but not take part in, the examination. All witnesses appearing on behalf of any applicant shall be fully heard.

RULE 5. (*a*) If upon the conclusion of the hearing the Chinese applicant is adjudged to be inadmissible, he shall be advised of his right to appeal to the Secretary of Commerce and Labor by a notice in the Chinese language. If the rejected applicant elects to appeal, written notice thereof must be served on the officer in charge within five days, exclusive of Sundays and legal holidays, after rejection.

(*b*) Applicant's counsel shall be permitted, after notice of appeal has been duly filed, to examine and make copies of the evidence upon which the excluding decision is based. If there is a consular officer of China at the port where examination is held, he also shall be notified in writing that the said Chinese applicant has been refused a landing, and shall be permitted to examine the record.

(*c*) The notice of appeal shall act as a stay upon the disposal of the applicant until a final decision is rendered by the Secretary of Commerce and Labor; and, within ten days after the excluding decision is rendered, unless further delay is required to investigate and report upon new evidence, the complete record of the case, together with such briefs, affidavits, and statements as are to be considered in connection therewith, shall be forwarded to the Secretary of Commerce and Labor by the officer in charge at the port of arrival, accompanied by his views thereon in writing. If, on appeal, evidence in addition to that brought

out at the hearing is submitted, it shall be made the subject of prompt investigation by the officer in charge and be accompanied by his report.

(*d*) Additional time for the preparation of cases will be allowed only when, in the judgment of the officer in charge, a literal compliance herewith would occasion injustice to the appellant or the risk of defeat of the purposes of the law. The reasons for the extension of time shall in every instance be stated in writing and forwarded with the appeal.

RULE 6. (*a*) Every Chinese person refused admission to the United States, being actually or constructively on the vessel or other conveyance by which he was brought to a port of entry, must be returned to the country whence he came, at the expense of the transportation agency owning such vessel or conveyance.

(*b*) The master, agent, or owner of any vessel or other means of transportation by which Chinese persons are brought to any port of entry shall, at least twenty-four hours before the intended time of departure of the vessel or other vehicle, notify the officer in charge at said port of such sailing or departure, in order that the said officer may place on board every Chinese person whose application for permission to land has been finally denied.

RULE 7. To prevent violations of law by Chinese seamen discharged or granted shore leave at ports of the United States, bond with approved security in the penalty of $500 for each such seaman shall be exacted for his departure from and out of the United States within thirty days.

RULE 8. A student within the meaning of the treaty and laws of the United States relating to the admission and exclusion of Chinese is—

(*a*) A person who pursues some regular course of study, including the higher branches of learning, but not excluding the elementary or preparatory branches, if undertaken in good faith;

(*b*) A person who attends one of the recognized educational institutions of the United States designed for those whose entire time may be given to scholastic work;

(*c*) A person who studies to be fitted for some particular profession, occupation, or calling, requiring a technical or otherwise special mental training; or

(*d*) A person, already possessing a liberal education, who de-

votes himself to the study of special subjects or questions, as a student of manners, customs, institutions, politics, economy, history;

And who, in any case, is also a person for whose maintenance and support as a student in the United States adequate financial provision has been, made or satisfactorily assured, or a person who, if he undertakes to provide for his own support, does not become a "laborer," or acquire any other status which would bring him within the class of Chinese persons excluded by statute or treaty; and who, in any case, is also a person whose intention it is, upon the conclusion of his studies, either to depart from the United States or, if he remains, to engage in no pursuit or calling which would render his presence in the United States unlawful.

RULE 9. (*a*) The lawful wife and minor children of a Chinese of the exempt classes may be admitted to the United States without presenting the certificate prescribed by section 6 of the act approved July 5, 1884, the certificate of the husband or father being sufficient if the wife or children accompany him. If the husband or father is domiciled in the United States, immigration officers shall require in the cases of such wives and minor children evidence concerning the husband or father of the character specified by section 2 of the act approved November 3, 1893, to establish the right of a domiciled Chinese merchant to readmission after temporary absence from the United States. In every instance there shall be exacted convincing evidence of the existence of the relationship claimed, and in the cases of children, of minority.

(*b*) The lawful wife of an American citizen of the Chinese race may be admitted for the purpose of joining her husband, and the lawful children of such a citizen partake of his citizenship and are therefore entitled to admission. In every such case convincing evidence of citizenship and relationship shall be exacted.

(*c*) In the cases described in the two preceding paragraphs, the exempt status or citizenship of the alleged husband or father may be investigated and determined prior to the arrival of the wife or child, but no investigation regarding the claimed relationship shall be made until the wife or child arrives at the port of entry.

RULE 10. The officers whose titles are given below have been authorized by their respective governments to issue to Chinese subjects or citizens of such governments the certificates prescribed by section 6 of the act approved July 5, 1884.

Brazil: Chiefs of police, or corresponding officers in the municipalities and civil subdivisions.

Canada:

Ottawa—Chief Controller of Chinese Immigration, or Assistant Controller of Chinese Immigration.
Vancouver—Controller of Chinese Immigration.
Victoria—Controller of Chinese Immigration.
Winnipeg—Controller of Chinese Immigration.

China:

In Chinese Empire—
Acting viceroy of Hu Kuang (Hunan and Hupeh).
Acting viceroy of Sze Ch'uen.
Acting viceroy of Liang Kuang (Kuangtung and Kuanghsi).
Viceroy of Manchuria.
Tartar-general of Fu-chou and customs superintendent of Fu-k'ien.
Governor of Anhui.
Governor of Fengtien.
Governor of Helungchiang.
Governor of Hunan.
Governor of Shantung.
Governor of Kiangsi.
Governor of Kirin.
Customs taot'ai of Tientsin.
Taot'ai of Antung.
Taot'ai of the Hui-Ning-Ch'ih-T'ai-Kwang circuit.
Taot'ai of the Hang-chia-hu circuit.
Taot'ai of Harbin.
Taot'ai of the Hsing-Ch'uan-yung circuit.
Acting taot'ai of the Ning-Shao-T'ai circuit.
Taot'ai of Newchwang.
Taot'ai of the Wen Ch'u circuit.
Taot'ai of the Yue-Ch'ang-Li circuit.
Taot'ai of the Teng-Lai-Ch'ing circuit.
Taot'ai of the Su-Sung-T'ai circuit.

China—Continued.

In countries foreign to China—

Austria-Hungary—Chinese minister or chargé d'affaires, Vienna.

Belgium—Chinese minister or chargé d'affaires, Bhussels.

Canada—Chinese consul general, Ottawa, and Chinese consul, Vancouver.

Cuba—Chinese minister or chargé d'affaires, Habana.

England—Chinese minister or chargé d'affaires, London.

France—Chinese minister or chargé d'affaires, Paris.

Germany—Chinese minister or chargé d'affaires, Berlin.

Hawaii—Chinese consul, Honolulu.

Italy—Chinese minister or chargé d'affaires, Rome.

Japan—Chinise minister or chargé d'affaires, Tokyo; Chinese consul-general, Yokohama.

Korea—Chinese consul-general, Seoul.

Mexico—Chinese minister or chargé d'affaires, Mexico City.

Netherlands—Chinese minister or chargé d'affaires, The Hague.

Peru—Chinese minister or chargé d'affaires, Lima.

Philippine Islands—Chinese consul-general, Manila.

Portugal—Chinese minister or chargé d'affaires, Lisbon.

Russia—Chinese minister or chargé d'affaires, St. Petersburg.

Siberia—Chinese commercial agent, Vladivostok.

Spain—Chinese minister or chargé d'affaires, Madrid.

Straits Settlements—Chinese consul-general, Singapore.

Transvaal—Chinese consul-general, Johannesburg.

Cuba: Chief of immigration department.

Dutch Guiana. (See Surinam.)

Dutch East Indies: Directeur van Justitie, Batavia.

German Protectorate of Kiautschou: Commissioner for Chinese affairs to the government, civil commissioner, or Oberrichter.

Guatemala: Minister of foreign affairs or subsecretary of state.

Hongkong: Registrar-general.

Jamaica: Deputy inspector-general of police.

Japan:

Governor of any fu (district) or ken (prefecture).

Hokkaido—Governor-general.

Formosa—Chief of prefecture having jurisdiction.

Macau, Portuguese province of: Secretary-general.
Mexico: Department for foreign affairs.
Philippine Islands: Collector of customs.
Society Islands: Commissioner of police of the municipality of Papeete, Tahiti.
Straits Settlements: Colonial secretary.
Federated Malay States—Colonial secretary, federal secretary, or secretary for Chinese affairs.
Surinam (Dutch Guiana):
Government's secretary, or secretary ad interim at Paramaribo.
Trinidad: Governor.
Venezuela: Mayors of cities or governors of provinces.

RULE 11. (*a*) Chinese persons of the exempt classes who are citizens or subjects of other insular territory of the United States than the territory of Hawaii shall, if they desire to go from such insular territory to the mainland or from one insular territory to another, comply with the terms of section 6 of the act approved July 5, 1884. The certificate prescribed by said section shall be granted by officers designated for that purpose by the chief executives of said insular territories, and the duties thereby imposed upon United States diplomatic and consular officers in foreign countries in relation to Chinese persons of the said classes shall be discharged by the officers in charge of the enforcement of the Chinese exclusion acts at the ports, respectively, from which any member of such excepted classes intend to depart from any insular territory of the United States: *Provided, however,* That the privilege of transit shall be extended to all persons other than laborers, as provided in Rule 18.

(*b*) As *all persons* who were citizens of the Republic of Hawaii on August 12, 1898, are citizens of the United States, persons of the Chinese race claiming such status may be admitted at either mainland or insular ports of entry upon producing evidence sufficient to establish such claim. Subjects of the Chinese Empire of the exempt classes residing in Hawaii must obtain certificates from the representative of their own Government (the Chinese consul, Honolulu), and such certificates must be viséed by the inspector in charge of the immigration service in said islands instead of by a diplomatic or consular officer.

(*c*) The governor of the Philippine Islands, having, by exec-

utive order No. 38, of September 23, 1904, designated the collector of customs, Manila, to *issue* to Chinese citizens of those islands the certificate provided by section 6 of the Act of July 5, 1884, and it being impracticable to require that such certificates shall be viséed, officers at ports of entry for Chinese will regard certificates issued to such Philippine citizens in the same manner as certificates issued by officials of foreign countries and viséed by American diplomatic or consular officers. Certificates issued by the Chinese consul-general, Manila, to *subjects of the Chinese Empire* residing in the Philippines will be viséed by the collector of customs at Manila, and when so viséed will be accorded the usual consideration.

RULE 12. (*a*) The laborer's return certificate, provided by section 7 of the Act of September 13, 1888, shall be issued only to such Chinese persons as have been duly registered under the provisions of the Act of May 5, 1892, or the Act of November 3, 1893, and present a certificate issued thereunder, or such as have established before a court of competent jurisdiction the lawfulness of their residence in the United States and present a certified copy of the court's decision, or such as otherwise establish before the immigration official to whom application for the return certificate is made that they are lawfully within the United States.

(*b*) Chinese laborers applying for such certificate shall be required to furnish the testimony of not less than two credible witnesses, who have had opportunity to know the circumstances to which they testify, that one of the grounds specified by the section of law above mentioned actually exists.

RULE 13. (*a*) Any Chinese laborer claiming the right to leave and return to the United States in accordance with sections 5-7 of the Act of September 13, 1888, shall make written application to the immigration officer located nearest to his place of residence for preinvestigation of his claim, such application to be prepared in triplicate on Form No. 432, furnished by said immigration officer, and to be filed at least thirty days prior to the date of proposed departure.

(*b*) Such applicant shall deposit with said officer a certificate of registration, or a certified copy of a decision of a court of competent jurisdiction showing that he is lawfully resident in the United States, or shall submit to such officer parole evidence

showing that he is lawfully resident within the United States, and such applicant shall make on oath before the officer in writing a full statement descriptive of his family or property or debts, as the case may be, and giving his name, height, local residence, occupation, and distinguishing marks, if any, and naming the port at which he expects to depart from the United States, which shall be one of those designated in Rule 1.

(*c*) To each of the three copies of said application there shall be attached a photograph of the applicant printed from the same negative.

(*d*) The officer to whom such application is submitted shall make a thorough examination as to the accuracy of the descriptive statement, whether the accompanying photograph is that of the person described in the certificate or certified copy of court record and statement, and whether applicant's height and descriptive physical marks are accurately given, and shall transmit the certificate of residence to the Commissioner-General of Immigration, for comparison with the record thereof in his office, in respect not only to name and date therein, but in all other particulars, or the certified copy of court record to the clerk of the court by whom issued for verification. Said officer shall also examine the applicant, such witnesses as he may produce, and such other witnesses as may be necessary, causing their testimony to be transcribed in duplicate.

(*e*) Upon completing the investigation said officer shall, after writing his signature across the margin of the photograph attached to each copy of the application, forward the original and triplicate of the application, the certificate or certified copy of court record, two transcripts of the testimony, and his report of his investigation of the case, to the immigration official in charge at the port of proposed departure. If applicant proposes to cross the boundary at a Canadian border port and embark at Vancouver, the papers shall be forwarded to the inspector in charge, Vancouver. If he proposes to make a visit to Canada merely, the papers shall be forwarded to the inspector in charge, Vancouver, if the border port of departure is Sumas; to the inpector in charge, Winnipeg, if the border port is Portal or Noyes; to the commissioner of immigration, Montreal, if the border port is Detroit, Buffalo, Malone, Richford, Lowelltown, or Vanceboro.

(*f*) The official in charge at the port of departure shall, upon

the receipt of the papers named in the preceding paragraph, return to the officer from whom received the triplicate copy of the application, placing thereon a statement as to whether or not he is satisfied, on the evidence presented, to indorse the application favorably.

(*g*) In the event an unfavorable response is received from the officer in charge at the port, the investigating officer shall notify the applicant thereof, advising him that such decision is not final, but that he may appeal to the Commissioner-General of Immigration from the adverse decision. If a favorable response is received, the investigating officer shall deliver to the applicant the duplicate copy of the application, with instructions to exchange it at the office of the immigration officer in charge at the port of departure for the original thereof. The triplicate returned from the port of proposed departure and the duplicate copies of the report and transcript of testimony shall be placed on file in the office of the inspector in charge of the district (or subdistrict, as the local practice may require) in which the applicant has resided.

(*h*) Upon the arrival of the applicant at the port of departure and the presentation by him of the duplicate of the application, such duplicate shall be placed on file, and the original, with the indorsement of approval appearing thereon filled out and signed, and with the signature and seal of the officer in charge placed over the margin of the photograph, shall be delivered to the applicant for use upon his return. At the time of departure —applicant's address in the country to which he is going shall be secured for use in the case it should become necessary to correspond with him; and the applicant must be clearly advised that upon his return to the port of departure there must still exist the statutory ground for his readmission.

(*hh*) If any such applicant desires to have a record made at the port of departure of his physical condition when leaving the country, he may apply for a medical examination by the Public Health and Marine-Hospital surgeon detailed to the Immigration Service at such port, the surgeon's certificate covering such examination to be indorsed upon or attached to the duplicate copy of Form 432. The record so constituted may be referred to on applicant's return if it becomes necessary to determine whether

he contracted before leaving this country a loathsome or dangerous contagious disease or tuberculosis.

(*i*) On the return of the applicant the original application shall be compared with the duplicate on file, and with the person presenting it, and if the officer in charge is satisfied of the identity of such person, and nothing has occurred during his absence to discredit the evidence taken on the preinvestigation, he shall be promptly admitted without further examination or investigation. The original application shall then be placed in the files, and the applicant's registration certificate or certified copy of court record shall be returned to him.

RULE 14. Whenever a Chinese laborer holding a return certificate is detained by his sickness or by other disability beyond his control for a time in excess of one year after the date of his departure from the United States, the facts shall be fully reported to and investigated by the consular representative of the United States at the port or place from which such laborer departs for the United States, and such consular representative shall certify, to the satisfaction of the officer in charge at the port of return, which must be the port from which such laborer departed, that he has fully investigated the statements of such laborer and believes that he was unavoidably detained for the time specified and for the reason stated, such certificate to be delivered by such consular representative to the master of the vessel on which the Chinese laborer departs for the United States and by the master delivered to the officer in charge at the port of return.

RULE 15. (*a*) Any Chinese merchant (or teacher, or student) resident in the United States who desires to go abroad temporarily may, in order to avoid delay in securing admission upon return to one of the ports named in Rule 1 hereof, make written application to the immigration officer located nearest to his place of residence for preinvestigation of his claim of being a merchant (or teacher, or student) within the meaning of the law, such application to be prepared in triplicate on Form No. 431, furnished by said immigration officer, and to be filed at least thirty days prior to the date of proposed departure.

(*b*) To each of the three copies of said application there shall be attached a photograph of the applicant printed from the same negative; and there shall be furnished therein the names

and addresses of two (or more) credible witnesses other than Chinese who are able and willing to testify of their own knowledge that for at least one year immediately preceding the date of proposed departure the applicant has been engaged exclusively in the pursuit named by him.

(*c*) The officer to whom said application is made shall examine the applicant, such witnesses as he may produce, and such other witnesses as may be necessary, causing their testimony to be transcribed in duplicate, and shall take such other steps as may be necessary and proper to determine whether the applicant's claim is true.

(*d*) Upon completing the investigation said officer shall, after writing his signature across the margin of the photograph attached to each copy of the application, forward the original and triplicate of the application, two transcripts of the testimony, and his report of his investigation of the case, to the immigration official in charge at the port of proposed departure. If applicant proposes to cross the boundary at a Canadian border port and embark at Vancouver, the papers shall be forwarded to the inspector in charge, Vancouver. If he proposes to make a visit to Canada merely, the papers shall be forwarded to the inspector in charge, Vancouver, if the border port of departure is Sumas, to the inspector in charge, Winnipeg, if the border port is Portal or Noyes; to the commissioner of immigration, Montreal, if the border port is Detroit, Buffalo, Malone, Richford, Lowelltown, or Vanceboro.

(*e*) The official in charge at the port of departure shall, upon the receipt of the papers named in the preceding paragraph, return to the officer from whom received the triplicate copy of the application, placing thereon a statement as to whether or not he is satisfied, on the evidence presented, to indorse the application favorably.

(*f*) In the event an unfavorable response is received from the officer in charge at the port, the investigating officer shall notify the applicant thereof, advising him that such decision is not final, but that he may appeal therefrom to the Commissioner-General of Immigration, or may, if he so desires, depart from the country, relying upon his ability to produce further and more satisfactory evidence on his return. If a favorable response is received the investigating officer shall deliver to the applicant

the duplicate copy of the application, with instructions to exchange it at the office of the immigration officer in charge at the port of departure for the original thereof. The triplicate returned from the port of proposed departure and the duplicate copy of the report, of the transcript of testimony, and of documentary proofs shall be placed on file in the office of the inspector in charge of the district (or subdistrict, as the local practice may require) in which the applicant has resided.

(*g*) Upon the arrival of the applicant at the port of departure and the presentation by him of the duplicate of the application, such duplicate shall be placed on file, and the original, with the indorsement of approval appearing thereon filled out and signed, and with the signature and seal of the officer in charge placed over the margin of the photograph, shall be delivered to the applicant for use upon his return. At time of departure applicant's address in the country to which he is going shall be secured for use in case it should become necessary to correspond with him.

(*gg*) If any such applicant desires to have a record made at the port of departure of his physical condition when leaving the country, he may apply for a medical examination by the Public Health and Marine-Hospital surgeon detailed to the Immigration Service at such port, the surgeon's certificate covering such examination to be indorsed upon or attached to the duplicate copy of Form 431. The record so constituted may be referred to on applicant's return if it becomes necessary to determine whether he contracted before leaving this country a loathsome or dangerous contagious disease or tuberculosis.

(*h*) On the return of the applicant the original application shall be compared with the duplicate on file, and with the person presenting it, and if the officer in charge is satisfied of the identity of such person, and nothing has occurred during his absence to discredit the evidence taken on the preinvestigation, he shall be promptly admitted without further examination or investigation. The original application shall then be placed in the files.

(*i*) This rule is adopted as a *privilege,* not a *requirement,* and precludes no one from deferring the submission of his proofs and the determination of his claimed status (primarily by an officer in charge at a port and finally on appeal by the Secretary) until application is made for reentry, nor from leaving the country

notwithstanding an adverse decision on an application submitted under this rule and again advancing his claim on returning to a port of the United States, with the privilege of appeal if then rejected.

(*j*) Chinese applying for preinvestigation under the terms of this rule, or for admission without having taken advantage of the rule, on the ground of having been domiciled in the United States as merchants, shall be required to establish to a reasonable certainty that they are actually owners of the business claimed or members of the firm owning such business, with proofs of the amounts actually paid for their respective interests and the times at which such payments were made.

RULE 16. (a) Any Chinese person residing in the United States and claiming that, by reason of birth in this country, he is lawfully entitled to so reside in, and to depart from and return to, the United States, who desires to go abroad temporarily, may, in order to avoid delay in securing admission upon return to one of the ports of entry named in Rule 1 hereof, make written application to the immigration officer located nearest to his place of residence for preinvestigation of his said claim, such application to be prepared in triplicate on Form No. 430, furnished by said immigration officer, and to be filed at least thirty days prior to the date of proposed departure.

(*b*) To each of the three copies of said application there shall be attached a photograph of the applicant printed from the same negative.

(*c*) The officer to whom said application is made shall obtain from the applicant such documentary proofs in duplicate of his claim as he may possess, and shall take all necessary steps (by correspondence with appropriate government officials) to ascertain whether such documents are genuine and relate to the applicant; and shall examine the applicant, such witnesses as he may produce, and such other witnesses as may be necessary, causing their testimony to be transcribed in duplicate: *Provided* That the applicant shall produce all of his witnesses at a time and place agreed upon, and no further witnesses will be examined nor additional evidence considered at his request unless it is clearly shown that its previous production was impossible. It is not permissible to incur traveling expenses in preinvestigating alleged natives.

(*d*) Upon completing the investigation said officer shall, after writing his signature across the margin of the photograph attached to each copy of the application, forward the original and triplicate of the application, the documentary proofs, two transcripts of the testimony, and his report of his investigation of the case, to the immigration official in charge at the port of proposed departure. If applicant proposes to cross the boundary at a Canadian border port and embark at Vancouver, the papers shall be forwarded to the inspector in charge, Vancouver. If he proposes to make a visit to Canada merely, the papers shall be forwarded to the inspector in charge, Vancouver, if the border port of departure is Sumas; to the inspector in charge, Winnipeg, if the border port is Portal or Noyes; to the commissioner of immigration, Montreal, if the border port is Detroit, Buffalo, Malone, Richford, Lowelltown, or Vanceboro.

(*e*) The official in charge at the port of departure, shall, upon the receipt of the papers named in the preceding paragraph, return to the officer from whom received the triplicate copy of the application, placing thereon a statement as to whether or not he is satisfied, on the evidence presented, to indorse the application favorably.

(*f*) In the event an unfavorable response is received from the officer in charge at the port, the investigating officer shall notify the applicant thereof, advising him that such decision is not final, but that he may appeal therefrom to the Commissioner-General of Immigration, or may, if he so desires, depart from the country, relying upon his ability to produce further and more satisfactory evidence on his return. If a favorable response is received, the investigating officer shall deliver to the applicant the duplicate copy of the application, with instructions to exchange it at the office of the immigration officer in charge at the port of departure for the original thereof. The triplicate returned from the port of proposed departure and the duplicate copy of the report, of the transcript of testimony, and of documentary proofs shall be placed on file in the office of the inspector in charge of the district (or subdistrict, as the local practice may require) in which the applicant has resided.

(*g*) Upon the arrival of the applicant at the port of departure and the presentation by him of the duplicate of the application, such duplicate shall be placed on file, and the original, with

the indorsement of approval appearing thereon filled out and signed, and with the signature and seal of the officer in charge placed over the margin of the photograph, shall be delivered to the applicant for use upon his return. At the time of departure applicant's address in the country to which he is going shall be secured, for use in case it should become necessary to correspond with him.

(*h*) On the return of the applicant the original application shall be compared with the duplicate on file, and with the person presenting it, and if the officer in charge is satisfied of the identity of such person, and nothing has occurred during his absence to discredit the evidence taken on the preinvestigation, he shall be promptly admitted without further examination or investigation. The original application shall then be placed in the files for safekeeping and possible future use by the applicant should he again leave the United States.

(*i*) This rule is adopted, in response to a quite general demand, as furnishing a convenient method to be followed by Chinese residents of the United States claiming American citizenship who are desirous of departing from the country with assurance of prompt readmission on return. It is a *privilege*, not a *requirement*, and precludes no one from deferring the submission of his proofs and the determination of his claimed status (primarily by an officer in charge at a port and finally on appeal by the Secretary) until application is made for reentry, nor from leaving the country notwithstanding an adverse decision on an application submitted under this rule and again advancing his claim on returning to a port of the United States, with the privilege of appeal if then rejected.

RULE 17. Every Chinese laborer seeking the privilege of transit through the United States to foreign territory shall comply with the following requirements; and if such a person is found, in the judgment of the officer in charge at the port of arrival, to be seeking the privilege of transit with an ulterior purpose of gaining unlawful access to the United States, he shall be refused permission to land:

(*a*) The applicant shall produce to the officer in charge at the port of arrival a prepaid ticket across the whole territory of the United States, land or water, intended to be traversed (and to his alleged foreign destination according to the manifest of

the vessel on which he arrives), and such other reasonable proof as may be required to satisfy the said officer that a bona fide transit only is intended and that the applicant has not the ulterior purpose of gaining access to the United States in violation of law; and such ticket and evidence must be so stamped or marked and dated by the said officer as to prevent their use a second time. No such applicant shall be considered as intending in good faith to make such transit only if he has already, on the same arrival, made application for and been denied admission to the United States.

(*b*) The applicant, or some responsible person in his behalf, or the transportation company whose through ticket he holds, shall furnish to the said officer in charge a good and sufficient bond in the penal sum of $500, conditioned for applicant's continuous transit through and actual departure from the United States within a reasonable time, not exceeding twenty days from the date said privilege is granted; but the said bond shall not be required of any such applicant who remains on ship-board or who is transferred from one vessel to another vessel in a United States port, for transit through the water territory of the United States, unless the vessel on which applicant departs is to touch at another port of the United States on the way to its foreign destination.

(*c*) The applicant shall furnish to said officer in charge, to be taken as directed by said officer, a photograph of himself in triplicate, together with such information as may be required.

(*d*) The officer in charge at the port of arrival shall prepare a descriptive list, to which one of the photographs required by paragraph (*c*) shall be attached for file in his office, containing as to each Chinese laborer applying for the privilege of transit the following information: Name, age, sex, last place of residence, and the data referred to therein required for his identification. To the said descriptive list there shall be attached a dated and signed statement by the said officer in charge that applicant has complied with all the provisions hereof, and that, being assured of applicant's good faith, the privilege of transit under bond has been accorded him.

(*e*) Two copies of the bound descriptive list required by paragraph (*d*) shall be prepared by the officer in charge on detached blanks corresponding in form with the said descriptive

list, to each of which shall be attached one of the photographs required by paragraph (*c*), and upon both of said photographs, as well as on the one attached to said bound list, shall be stamped the seal of the said officer in charge, so placed as not to cover any part of the face. One of said copies shall be forwarded by the first mail after it is prepared to the officer in charge at the intended port of exit and the remaining one shall be given to the conductor of the train, or to the captain of the vessel, by which the Chinese laborer to whom they relate is carried, for delivery to the said officer at the port of exit.

(*f*) One of the copies described in paragraph (*e*) shall be retained by the officer in charge at the port of exit, for his files and the other, after an indorsement has been made thereon, duly signed and dated, to the effect that the Chinese laborer named therein has been identified and has departed from the United States, shall be mailed to the officer by whom it was prepared, and its receipt by him, duly executed as herein required, shall be his authority for cancellation of the bond given on behalf of the Chinese laborer.

RULE 18. No Chinese person who shall satisfy the officer in charge that he is other than a laborer (although not supplied with the certificate provided for by section 6 of the act of July 5, 1884), shall be required to comply with so much of the provisions of Rule 17 as requires Chinese persons seeking the privilege of transit to submit photographs of themselves and to be measured. If, however, any such Chinese person, after having been admitted to pass in transit through the United States, be found therein at the expiration of twenty days from the date of such admission, he shall be deemed to be in the United States in violation of law and shall be deported.

RULE 19. (*a*) With a view to afford a proper and efficient means of identification to Chinese persons, or persons of Chinese descent, admittetd or readmitted to the United States upon proof of their status as members of the classes specifically exempted from the excluding provisions of the Chinese-exclusion laws, or upon proof that they are citizens of the mainland of the United States by birth therein, a certificate of identity, of which the following is a copy, shall hereafter be issued by the officer in charge at the port of entry to each such person admitted or readmitted to this country by him who may apply for the same;

the instructions hereinafter given to be carefully observed in issuing such certificates: *Provided,* That only one such certificate shall be issued to any one Chinese person, except that duplicates may be furnished of those unavoidably lost or destroyed, under the terms of paragraph (*h*) of this rule, the method to be followed with a view to preventing a violation of this proviso being described in paragraph (*i*) hereof.

(*b*)

No..... [Face] Original;

UNITED STATES OF AMERICA.

Certificate of Identity.

Issued in conformity with a regulation of the Department of Commerce and Labor adopted March 19, 1909.

This is to certify that the person named and described on the reverse side hereof has been regularly admitted to the United States, as of the status indicated, whereof satisfactory proof has been submitted. This certificate is not transferable, and is granted solely for the identification and protection of said Chinese person so long as his status remains unchanged; to insure the attainment of which object an accurate description of said person is written on the reverse side hereof, and his photographic likeness is attached, with his name written partly across, and the official seal of the United States Immigration officer signing this certificate impressed partly over, said photograph.[1]

(*c*) The certificates are printed from engraved plates, numbered consecutively, and bound in books containing 50 each, an original and a duplicate of each number being furnished, arranged the latter above the former for convenience in copying from one to the other, and perforated to permit of easy detachment from the book and from each other.

(*d*) In issuing said certificates care shall be exercised to have the original and the duplicate correspond in every detail. All blank spaces remaining after writing in the data required to complete the identification of the person to whom the certificate is issued shall be covered by ruled lines, so as to prevent the insertion of any additional word or words without detection. The copy of certificate herein given has been so printed as to furnish an illustration of the manner in which such certificate should be prepared, except that the seal should be impressed

[1] Reverse omitted.

across the margin of the photograph near the center of the certificate.

(*e*) These certificates being issued as an accomodation to Chinese persons, such persons as may apply for same shall be required to furnish two unmounted photographs, of suitable quality, of themselves, printed from a negative that has not been retouched, representing the subject without hat, full front view, showing both ears, measuring 1¼ inches from top of head to point of chin. The photograph shall be attached to the certificate with great care to insure permanency and prevent warping. The height shall be carefully taken and inserted in feet and inches, and in recording physical marks and peculiarities those which are the most prominent and the least likely to be obliterated by lapse of time shall be selected. In recording the status as of which admitted, the address to which proceeding shall be given, if possible.

(*f*) These certificates, as shown on their face, are issued for the protection and identification of Chinese of the exempt classes *only so long as such persons shall retain their exempt status,* and are not transferable. Therefore, when such a certificate is found by an inspector in the possession of a person, not a United States citizen, engaged in the performance of manual labor, or of a person to whom it does not relate as shown by a comparison of such person with the photograph and personal description appearing thereon, or if at any time it should develop that such certificate has been obtained by fraud, the certificate shall be taken up and forwarded to the Bureau of Immigration and Naturalization, with report of the circumstances, for decision whether it shall be canceled.

(*g*) The duplicates of the certificates shall be forwarded to the Bureau of Immigration and Naturalization promptly upon the issuance of the originals, in order that such duplicates may be safely filed for future reference.

(*h*) If such a certificate of identification shall be unavoidably lost or destroyed at any time, a certificate in lieu thereof will be issued by the Bureau of Immigration and Naturalization upon the applicant's furnishing satisfactory proof of the unavoidable loss or destruction of such certificate, of his identity as the person to whom it was originally issued, and of his exempt status.

(*i*) With a view to prevent the issuance of more than one

certificate of identity to any one Chinese person, officers in charge at ports of entry shall render to each of the other officers in charge at such ports quarterly reports, giving the names and descriptions of all persons to whom such certificates have been issued.

(*j*) The certificate of identity when issued to Chinese of the exempt classes is granted solely for the protection of such Chinese while *residing* in the United States and retaining an exempt status, and will not, therefore, be accepted as satisfactory evidence in any other connection. For example, a domiciled exempt holding such a certificate of identity will not be excused from a compliance with the terms of par. (*j*) of Rule 15. The certificate may, however, be accepted as evidence of a former admission as of an exempt status, and be given such *cumulative* value as the circumstances of a case justify. When issued to a person of Chinese descent, as a United States citizen by birth on the mainland, the certificate will be accepted at all times thereafter as evidence of such citizenship; extreme caution to be observed, however, in determining whether the certificate is genuine and in the hands of the person to whom issued: *Provided, always,* That fraud has not been perpetrated upon the Government in securing its issuance.

(*k*) Upon the issuance of the certificate of identity herein prescribed, all other certificates or papers offered by Chinese exempts or natives to establish their right of admission to the United States shall be retained by the officer at the port of entry.

RULE 20. (*a*) An original certificate of residence can be issued to a Chinese laborer only upon the finding of a justice, judge, or commissioner of a United States court that such Chinese laborer was a resident of the United States during the period of registration and that, by reason of accident, sickness, or other unavoidable cause he was then unable to secure such a certificate.

(*b*) The authority, power, and jurisdiction in relation to the registration of Chinese lawfully resident in the United States, formerly vested by law in collectors of internal revenue, have been transferred to the Commissioner-General of Immigration, Washington, D. C., to whom, therefore, applications for original certificates should be addressed, accompanied by a certified transcript of a judicial finding of the character described in paragraph (*a*) hereof.

RULE 21. Duplicate certificates of residence shall be issued only upon satisfactory proof to the Commissioner-General of Immigration that the Chinese person upon whose behalf application therefor is made has actually, by unavoidable accident, lost his original certificate. Applications for such certificates should be addressed to the Commissioner-General of Immigration, Washington, D. C., should be sworn to, and should contain the following data:

(1) Applicant's name; also any other names known by at time of registration.

(2) Number of original certificate of residence, if obtainable.

(3) Whether original certificate was issued under act approved May 5, 1892, or act approved November 3, 1893, amendatory thereof.

(4) Place and at least approximate date of issue of original certificate.

(5) Applicant's place of residence, town, street, and number, and occupation at time of issuance of original certificate.

(6) Applicant's present place of residence and occupation.

(7) Applicant's present age and exact height, color of his eyes and complexion, and any physical marks or peculiarities that would aid in his identification.

(8) A statement of the circumstances under which original certificate was lost, including date, place, and every detail of such loss.

(9) Affidavits of witnesses familiar, of their own personal knowledge, with the circumstances of the loss.

(10) Two unmounted photographs of applicant from a negative that has not been retouched, full front view, showing both ears, about 3 by 3 inches square, head 1¼ inches long from top of head to point of chin—one to be attached to the duplicate, if issued, the other to be retained in the files of the Bureau.

(11) Time of applicant's first arrival in the United States and port of landing.

(12) Name of witness to *original* application for registration.

RULE 22. (*a*) Officers shall not issue any certificate, letter, or other document, or any duplicate thereof, other than those provided for by law and these regulations, setting forth the

status of a Chinese person as a resident of this country, or otherwise indorsing such person.

(*b*) Certificates of residence issued to Chinese laborers, if found elsewhere than in possession of persons to whom issued, shall be taken up and forwarded to the Bureau of Immigration and Naturalization.

RULE 23. (*a*) Chinese found in the United States engaged in laboring pursuits and not having in their possession a certificate issued under either the Act of May 5, 1892, or the Act of November 3, 1893, or other satisfactory evidence of their right to be and remain in the country, are subject to arrest and deportation. Full opportunity to produce the certificate or other evidence shall always be accorded, under proper safeguards, before taking a Chinese laborer before a justice, judge, or commissioner of a United States Court and swearing out a warrant for his commitment and trial.

(*b*) Orders for the deportation of Chinese arrested and tried in accordance with the Chinese-exclusion laws can be issued only by a justice, judge, or commissioner of a United States court upon his decision that such Chinese have been found to be unlawfully in the United States.

(*c*) Aliens, including Chinese, who enter the United States surreptitiously "shall be adjudged to have entered the country unlawfully and shall be deported as provided in sections 20 and 21" of the immigration act (section 36). Therefore, in arresting aliens, including Chinese, who have entered the United States in violation of the immigration law and regulations, immigration officials should follow the procedure prescribed in the "Rules relating to deportation" of the Immigration Regulations of July 1, 1907 (Rules 31-39), so far as said regulations are practically applicable to such cases.

RULE 24. To insure the identification of Chinese arrested within the United States, the following instructions shall be observed with respect to the photographing of such Chinese, the expense thereof to be borne by the appropriation "Expenses of regulating immigration" (Chinese).

(*a*) Every Chinese person arrested under the exclusion laws by an immigration or other official will be photographed immediately upon the consummation of the arrest, the photograph to be prepared in triplicate and not retouched nor mounted, one

copy to be attached to the United States court or commissioner's docket, one to be furnished the officer in charge of the district in which the arrest occurs, and the other to be attached (in the event that deportation is finally ordered) to the writ of deportation.

(*b*) When arrests occur at stations the officers of which are supplied with photographers' apparatus, the photographs will be made by such officers; when in other localities, the immigration officers will have the photographs made by local photographers at the least possible expense compatible with a proper performance of the work, bills therefor to be rendered on the blank vouchers supplied for rendering accounts.

(*c*) The copy of the photograph attached to the docket of the court or commissioner should be permanently affixed thereto and in such manner as to render as remote as possible the chance of any change or substitution being made.

(*d*) The copy furnished the officer in charge of the district will be placed in his office records, together with a short history of the case to which it relates, being filed in such manner as to furnish a comprehensive record that can be readily referred to when needed at any future time.

(*e*) The copy attached to the writ in case of deportation should be affixed permanently thereto, and in such manner as to prevent the substitution of some other photograph therefor (the best method of obtaining this result being the impression of the court or commissioner's seal over the edge of such photograph, but in such a way as not to mar or deface the features represented thereby), the objects of its use being to afford a means of identifying the alien as the person referred to in the writ, and to supply the immigration official at the port of deportation with a means of identifying the person delivered on board the vessel as such person.

(f) Inspectors should request, and will undoubtedly receive, the full cooperation of commissioners or judges and marshals or deputy marshals, so far as necessary, in carrying out the above instructions.

RULE 25. The appropriation "Expenses of regulating immigration" (Chinese) should be charged with the expense of deporting Chinese aliens arrested under paragraph (*c*) of Rule

23, and with the following expenses connected with the deportation of Chinese under paragraph (*a*) thereof:

(*a*) The cost of maintenance of Chinese persons who are taken into custody up to and including the date upon which warrant issued by a United States judge or commissioner is received by the marshal.

(*b*) The cost of maintenance of Chinese prisoners commencing with the date writ of deportation is first received by the marshal, and in case of appeal, cost of maintenance up to the date of such appeal, and from the date of receipt by the marshal of the court's orders dismissing the appeal.

(*c*) The cost of deportation, including railroad and steamship fares of prisoners and marshal or deputy, authorized expenses for guard hire, and maintenance en route.

Upon receiving writs of deportation marshals should at once make written report to the Commissioner-General of Immigration, Department of Commerce and Labor, Washington, D. C., giving names of the prisoners, where confined in jail, and when the period of appeal provided by section 13 of the Act approved September 13, 1888, will expire. Instructions will then be issued as to the route to be followed, number of guards to be employed, and to whom accounts are to be presented or forwarded for settlement.

RULE 26. Under the authority conferred by section 7 of the act approved February 14, 1903, entitled "An act to establish the Department of Commerce and Labor," the authority, power, and jurisdiction in relation to the exclusion of Chinese persons and persons of Chinese descent heretofore vested by law in collectors of customs have been conferred upon and vested in officers in charge of districts (or inspectors acting under their direction) as follows, such officers being under the control of the Commissioner-General of Immigration;[1] and, pursuant to the said authority, the Chinese and immigrant inspectors in the United States Immigration Service are hereby designated to exercise the powers of arrest conferred upon United States customs officials and collectors of internal revenue and their deputies, by section 6 of the act approved May 5, 1892 (27 Stat., p. 25), as amended by section 1 of the act approved November 3, 1893 (28 Stat., p. 7).

[1] For list of ports of entry, see Rule 1.

Dist. No.	Title of officer.	Location of headquarters.	Extent of districts.
1	Commissioner of Immigration.	Montreal, P. Q., Canada.	Canadian border and Canadian seaports
2	Commissioner of Immigration.	Boston, Mass., ...	New England States, including port of Boston and subports of Portland and New Bedford.
3	Chinese inspector in charge.	17 State street, New York, N. Y.	New York and New Jersey.
4	Commissioner of Immigration.	Philadelphia, Pa..	Pennsylvania, Delaware, and West Virginia; port of Philadelphia and substations of Pittsburg, Chester, and Wilmington.
5	Commissioner of Immigration.	Baltimore, Md....	Maryland and District of Columbia; port of Baltimore and subports of Annapolis and Washington.
6	Inspector in Charge.....	Norfolk, Va.	Virginia, North Carolina, and South Carolina; port of Norfolk and subports of Newport News, Wilmington and Charleston.
7	Inspector in Charge	Tampa, Fla.	Georgia, Florida, and Alabama; port of Tampa and subports of Savannah, Brunswick, Jacksonville, Miami, Key West, Pensacola, and Mobile.
8	Commissioner of Immigration.	New Orleans, La...	Louisiana, Mississippi, Arkansas, and Tennessee; port of New Orleans and subports of Gulfport and Pascagoula.
9	Inspector in Charge.....	Galveston, Tex....	Port of Galveston and subports of Port Arthur and Corpus Christi, Tex.; territory bounded on the north and east by the Louisiana-Texas border and the Gulf of Mexico; on the west by the westerly boundaries of the following counties in Texas: Shelby, Nacogdoches, Angelina, Polk, San Jacinto, Montgomery, Harris, Fort Bend, Wharton, Jackson, Victoria, Refugio, San Patricio, and Nueces; and on the south by the southerly boundary of Nueces County, Texas.
10	Inspector in Charge.....	Cleveland, Ohio...	Ohio and Kentucky; substations at Toledo and Columbus.
11	Inspector in Charge.....	Chicago, Ill.....	Illinois, Indiana, Michigan, and Wisconsin.
12	Inspector in Charge.....	Minneapolis, Minn.	Minnesota and North and South Dakota.
13	Inspector in Charge.....	St. Louis, Mo....	Missouri, Iowa, Nebraska, Kansas, and Oklahoma.
14	Inspector in Charge.....	Denver, Colo.....	Colorado, Wyoming, and Utah; substation at Salt Lake City.
15	Inspector in Charge.....	Helena, Mont.....	Montana and Idaho; substation at Havre, Mont.
16	Commissioner of Immigration.	Seattle, Wash.....	Washington; port of Seattle and subports of Tacoma, Port Townsend, and Olympia; substations of Spokane and Walla Walla.
17	Inspector in Charge.....	Portland, Oreg...	Oregon; port of Portland and subport of Astoria.

18	Commissioner of Immigration.	San Francisco, Cal.	Northern California and Nevada; port of San Francisco.
20	Inspector in Charge.....	Ketchikan, Alaska.	Alaska; port of Ketchikan and substations of Skagway and Nome.
21	Commissioner of Immigration.	San Juan, P. R...	Porto Rico; port of San Juan and subport of Ponce.
22	Inspector in Charge.....	Honolulu, Hawaii.	Territory of Hawaii, including all ports.
23[1]	Supervising Inspector.....	El Paso, Tex.....	Texas (except Galveston district, No. 9), New Mexico, and Arizona; port of El Paso; subports of Nogales, Douglas, Naco, Del Rio, Eagle Pass, Laredo, Hidalgo, and Brownsville; substations of San Antonio, Tucson, and Fort Worth. Southern California; port of San Diego and substations of Los Angeles and Andrade.

[1] Former District No. 19 has been combined with No. 23.

DANL. J. KEEFE,
Commissioner-General of Immigration.

Approved, April 15, 1912.

BENJ. S. CABLE,
Acting Secretary.

APPENDIX D

WHITE SLAVE TRAFFIC ACT

Act of June 25, 1910 (36 Stat., 825).

AN ACT To further regulate interstate and foreign commerce by prohibiting the transportation therein for immoral purposes of women and girls, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

SEC. 2. That any person who shall knowingly transport, or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other

immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 3. That any person who shall knowingly persuade, induce, entice, or coerce, or cause to be persuaded, induced, enticed, or coerced, or aid or assist in persuading, inducing, enticing, or coercing any woman or girl to go from one place to another in interstate or foreign commerce, or in any Territory or the District of Columbia, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and who shall thereby knowingly cause or aid or assist in causing such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or any Territory or the District of Columbia, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than five thousand dollars, or by imprisonment for a term not exceeding five years, or by both such fine and imprisonment, in the discretion of the court.

SEC. 4. That any person who shall knowingly persuade, induce, entice, or coerce any woman or girl under the age of eighteen years from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, with the purpose and intent to induce or coerce her, or that she shall be induced or coerced to engage in prostitution or debauchery, or any other immoral practice, and shall in furtherance of such purpose knowingly induce or cause her to go and to be carried or transported as a passenger in interstate commerce upon the line or route of any common carrier or carriers, shall be deemed guilty of a felony, and on conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment for a term not exceeding ten years,

or by both such fine and imprisonment, in the discretion of the court.

SEC. 5. That any violation of any of the above sections two, three, and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a passenger in interstate or foreign commerce, or in any Territory or the District of Columbia, contrary to the provisions of any of said sections.

SEC. 6. That for the purpose of regulating and preventing the transportation in foreign commerce of alien women and girls for purposes of prostitution and debauchery, and in pursuance of and for the purpose of carrying out the terms of the agreement or project of arrangement for the suppression of the white-slave traffic, adopted July twenty-fifth, nineteen hundred and two, for submission to their respective governments by the delegates of various powers represented at the Paris conference and confirmed by a formal agreement signed at Paris on May eighteenth, nineteen hundred and four, and adhered to by the United States on June sixth, nineteen hundred and eight, as shown by the proclamation of the President of the United States, dated June fifteenth, nineteen hundred and eight, the Commissioner-General of Immigration is hereby designated as the authority of the United States to receive and centralize information concerning the procuration of alien women and girls with a view to their debauchery, and to exercise supervision over such alien women and girls, receive their declarations, establish their identity, and ascertain from them who induced them to leave their native countries, respectively; and it shall be the duty of said Commissioner-General of Immigration to receive and keep on file in his office the statements and declarations which may be made by such alien women and girls, and those which are hereinafter required pertaining to such alien women and girls engaged in prostitution or debauchery in this country, and to furnish receipts for such statements and declarations provided for in this Act to the persons, respectively, making and filing them.

Every person who shall keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within

three years after she shall have entered the United States from any country, party to the said arrangement for the suppression of the white-slave traffic, shall file with the Commissioner-General of Immigration a statement in writing setting forth the name of such alien woman or girl, the place at which she is kept, and all facts as to the date of her entry into the United States, the port through which she entered, her age, nationality, and parentage, and concerning her procuration to come to this country within the knowledge of such person, and any person who shall fail within thirty days after such person shall commence to keep, maintain, control, support, or harbor in any house or place for the purpose of prostitution, or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States from any of the countries, party to the said arrangement for the suppression of the white-slave traffic, to file such statement concerning such alien woman or girl with the Commissioner-General of Immigration, or who shall knowingly and willfully state falsely or fail to disclose in such statement any fact within his knowledge or belief with reference to the age, nationality, or parentage of any such alien woman or girl, or concerning her procuration to come to this country, shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine of not more than two thousand dollars, or by imprisonment for a term not exceeding two years, or by both such fine and imprisonment, in the discretion of the court.

In any prosecution brought under this section, if it appear that any such statement required is not on file in the office of the Commissioner-General of Immigration, the person whose duty it shall be to file such statement shall be presumed to have failed to file said statement, as herein required, unless such person or persons shall prove otherwise. No person shall be excused from furnishing the statement, as required by this section, on the ground or for the reason that the statement so required by him, or the information therein contained, might tend to criminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture under any law of the United States for or on account of any transaction, matter or thing, concerning which he may truth-

fully report in such statement, as required by the provisions of this section.

SEC. 7. That the term "Territory," as used in this Act, shall include the district of Alaska, the insular possessions of the United States, and the Canal Zone. The word "person," as used in this Act, shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this Act, the act, omission, or failure of any officer, agent, or other person, acting for or employed by any other person or by any corporation, company, society, or association within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such other person, or of such company, corporation, society, or association, as well as that of the person himself.

SEC. 8. That this Act shall be known and referred to as the White-slave traffic Act."

Approved, June 25, 1910.

APPENDIX E

ACTS OF THE PHILIPPINE COMMISSION

Act No. 317 of the Philippine Commission.

SEC. 1. No Chinaman who left the Philippine Islands before the 13th day of August, 1898, and has remained outside of the Islands until the present time, and who would be excluded but for the orders heretofore issued by the military governor of the Philippine Islands extending the time within which Chinamen might be permitted to return, shall be permitted to enter the Islands.

SEC. 2. Chinamen who have left the Philippine Islands since the 13th day of August 1898, or who may leave in the future, shall be permitted to land only upon the production of a certificate of the Collector of Customs of the port of the Philippine Islands from which they departed, issued at the time of their departure. The period in which such legal return can be made after their departure from the Islands is hereby limited to one and one half years, which period shall be stated in the certificate to be issued by the Collector of Customs at the time of departure, and no extension of that period shall be granted for illness, or for any other cause, by any authority.

SEC. 3. All laws, regulations, and orders heretofore issued are hereby repealed insofar as the same are inconsistent with the provisions of this act.

SEC. 4. The public good requiring the speedy enactment of this bill, the passage of the same is hereby expedited in accordance with section 2 of "An Act prescribing the order of procedure by the Commission in the enactment of laws," passed September 26, 1900.

SEC. 5. This act shall take effect on its passage.

Enacted December 13, 1901.

Act No. 702 of the Philippine Commission.

SEC. 1. The Collector of Customs for the Philippine Archi-

pelago is hereby authorized and directed to make the registration of all Chinese laborers in the Philippine Islands as required and prescribed by section four of the Act of Congress approved April twenty-ninth nineteen hundred and two, entitled "An Act to prohibit the coming into and to regulate the residence within the United States, its Territories, and all territory under its jurisdiction, and the District of Columbia of Chinese and persons of Chinese descent" and to employ for that purpose the personnel of the Philippine Customs Service, the provincial and military officers hereinafter provided, and such other persons as may be necessary.

SEC. 2. The Insular Collector of Customs shall make such rules and regulations as may be necessary for the efficient execution of this Act, prescribing the form of certificates of registration required hereby, and making such provisions that certificates may be procured in localities convenient to the applicants.

SEC. 3. Each certificate of registration shall contain the name, age, date, and place of birth, registry of birth, if any, local residence, occupation, and photograph of the person therein described, and such other data in respect to him as shall be prescribed by the Insular Collector of Customs, and shall be issued by the proper officer upon payment to him of a fee of fifty cents, United States Currency, said fee to be accompanied by a true photograph of the applicant in triplicate to the satisfaction of such officer.

SEC. 4. Any Chinese laborer within the limits of the Philippine Islands who shall neglect, fail, or refuse to obtain within the time prescribed by section 4 of the Act of Congress of the United States referred to in section 1 of this Act, the certificate of registration by this Act provided to be issued, and who shall be found within the Philippine Islands without such certificate of registration after such time has elapsed, may be arrested upon warrant, issued by the Court of First Instance of the province or by the Justice's Court of the municipality returnable before said Court of Frst Instance, by any Customs official, police, constabulary, or other peace officer of the Philippine Islands, and brought before any judge of a Court of First Instance in the Islands, whose duty it shall be to order that such Chinese laborer

be deported from the Philippine Islands, either to China or the country from whence he came, unless he shall affirmatively establish clearly and to the satisfaction of such judge by at least one credible witness other than Chinese, that although lawfully in the Philippine Islands at and ever since the passage of this Act he has been unable by reason of accident, sickness, or other unavoidable cause to procure the certificate within the time prescribed by law, in which case the court shall order and adjudge that he procure the proper certificate within a reasonable time and such Chinese laborer shall bear and pay the costs of the proceeding: *provided, however,* that any Chinese laborer failing for any reason to secure the certificate required under this law within two years from the date of its passage shall be deported from the Islands. If it appears that such Chinese laborer had procured a certificate in due time but that the same has been lost or destroyed, he shall be allowed a reasonable time to procure a duplicate from the Insular Collector of Customs or from the officer granting the original certificate, and upon the production of such duplicate such Chinese laborer shall be discharged from custody upon payment of costs.

Any Chinese person having procured a certificate of registration, and the same having been lost or destroyed shall have a right to procure a duplicate thereof under such regulations as may be prescribed by the Insular Collector of Customs upon the payment of double the fee exacted for the original certificate and the presentation of his true photograph in triplicate.

No Chinese person heretofore convicted in any court of the States or Territories of the United States or the Philippine Islands of a felony shall be permitted to register under the provisions of this Act without special authority from the Civil Governor.

SEC. 5. Every Chinese person having a right to be and remain in the Philippine Islands shall obtain the certificate of registration specified in section 3 of this Act as evidence of such right and shall pay the fee and furnish his photograph in triplicate as in said section prescribed; and every Chinese person found without such certificate within the Philippine Islands after the expiration of the time limited by law for registration shall be presumed, in the absence of satisfactory proof to the

contrary, to be a Chinese laborer and shall be subject to deportation as provided in section 4 of this Act. Every Chinese person shall, on demand of any Customs official, police, Constabulary, or other peace officer, exhibit his certificate, and on his refusal to do so may be arrested and tried as provided in section 4 of this Act.

SEC. 6. Any person who shall knowingly and falsely alter or substitute any name for the name written in any certificate of registration or forge such certificate, or knowingly utter any forged or fraudulent certificate, or falsely personate the person to whom said certificate was originally issued or who shall falsely present any such certificate shall be punished by a fine not to exceed one thousand dollars and imprisoned for a term not to exceed five years.

SEC. 7. Every Chinese person who may be entitled to come into the Philippine Islands shall upon landing, if he so requests, be given by the Collector of Customs at the port, at which he lands a certificate containing his name, age, photograph, occupation, place of last residence, the date on which he landed, and such other data in respect to him as may be prescribed by the Insular Collector of Customs, and such certificate shall be issued upon payment to the proper officer of fifty cents United States Currency, accompanied by a true photograph of the applicant in triplicate, to the satisfaction of such officer.

SEC. 8. Each certificate issued under this Act shall be made out in triplicate, and to each of the triplicate copies shall be attached a true photograph of the person to whom issued. One of such triplicate certificates shall be delivered to the applicant, one filed in the office of the Registrar of Chinese for the district in which the application is made, and the third transmitted to the Insular Collector of Customs for permanent record and file.

SEC. 9. The Collector of Customs for the Philippine Archipelago is hereby authorized to deputize as registrar or deputy registrar of Chinese in each organized province of the Civil Government, any collector or deputy collector of customs or treasurer of the province, and the officers so deputized shall give the necessary assistance under the direction of the Insular Collector of Customs in the execution of this Act.

SEC. 10. In unorganized provinces the Insular Collector of Customs is authorized to designate, where available, any officer or qualified employee in the customs service for duty as registrar or deputy registrar of Chinese, and in case none such is available, then by and with the consent of the commanding officer of the Division of the Philippines he is authorized to designate an officer of the United States Army to serve as registrar of Chinese.

SEC. 11. Registrars and deputy registrars of Chinese, in addition to their compensation as officials or employees of the Civil Government or officers of the United States Army, shall receive not to exceed the sum of seventy-five dollars, United States Currency, per month, and their actual and necessary traveling expenses, not to exceed three dollars United States Currency, per day, incurred under orders of the Insular Collector and by reason of their being engaged in the work prescribed in this Act.

SEC. 12. The words "laborer" or "laborers" wherever used in this Act shall be construed to mean both skilled and unskilled manual laborers including Chinese laundrymen and Chinese employed in mining, fishing, huckstering, peddling, or taking, drying, or otherwise preserving shell or other fish for home consumption or exportation.

The term "merchant" as employed in this Act signifies a person engaged in buying and selling merchandise at a fixed place of business which business is conducted in his name, and who during the time he claims to be engaged as a merchant does not engage in the performance of any manual labor except such as is necessary in the conduct of his business as such merchant. The definition of "laborer" and "merchant" set out in this section shall receive the same construction as that given to it by the Federal Courts of the United States and the rulings and regulations of the Treasury Department of the United States.

SEC. 13. (As amended by Act No. 816). For the purposes of this Act the following temporary employees, or so many thereof as may be necessary, are hereby authorized in the office of the Collector of Customs for the Philippine Archipelago: Ten registration clerks of class nine, four Chinese translators of class D, and two stenographers and typewriters of class eight.

SEC. 14. (Appropriation of forty thousand dollars, United States Currency out of the moneys in the Insular treasury to

meet expenses incurred in connection with Chinese registration.)

SEC. 15. It being impossible to complete the registration herein provided for within one year from the passage of the Act of Congress approved April 29, 1902, the time for such registration is, pursuant to the authority granted by section 4 of said Act, hereby extended for a period of six months to date from April 29, 1903.

SEC. 16. This Act shall take effect on its passage.

Enacted, March 27, 1903.

By subsequent acts of the Philippine Commission, No. 990 (Nov. 11, 1903), No. 1035 (Jan. 6, 1904), and No. 1084 (Mar. 10, 1904) the registration period designated in section 15 of Act 702 was extended to April 29, 1904.

GENERAL INDEX.

(See separate alphabetical indices under **ACT OF FEBRUARY 20TH, 1907 AS AMENDED** (pp. 859-875), and **DEPORTATION PROCEDURE** (pp. 883-892), infra. For index to Appendix, see **TABLE OF CONTENTS**).

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